

PRESIDENT CARTER'S SOCIAL SECURITY PROPOSALS

HEARINGS
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
FIRST SESSION
ON
PRESIDENT CARTER'S SOCIAL SECURITY PROPOSALS

MAY 10; JULY 18, 19, 20, 21, 22, 26, and 27, 1977

PART 2 of 2

JULY 21, 22, 26, AND 27, 1977

Serial 95-27

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PRESIDENT CARTER'S SOCIAL SECURITY PROPOSALS

THURSDAY, JULY 21, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SOCIAL SECURITY,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2200, Rayburn House Office Building, Hon. Andrew Jacobs, Jr., presiding.

Mr. JACOBS. This is a continuation of the hearings on proposed changes in the social security program.

The first witness is a panel of House Members, the Honorable Martha Keys of Kansas, Donald Fraser of Minnesota, together with Nancy Gordon.

We regret Congressman Nolan will not be present this morning due to his conflict in schedule.

PANEL CONSISTING OF HON. MARTHA KEYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS; HON. DONALD M. FRASER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA, ACCOMPANIED BY JANE SHERBURNE, LEGISLATIVE ASSISTANT; AND NANCY M. GORDON, WASHINGTON, D.C.

STATEMENT OF HON. DONALD M. FRASER

Mr. FRASER. Thank you very much, Mr. Chairman.

I am Congressman Fraser from Minnesota. On my left is Jane Sherburne of my staff, whom I have asked to provide assistance.

Mr. Chairman, I have a written statement which I would like to submit for the record. I will try to summarize it in 10 minutes, if I may.

The social security system's architects assumed that most wage earners were men and that marriages lasted. Those were the assumptions when we got the social security system. Today half the women under the age of 60 are in the work force and one out of every two marriages is breaking up.

So these old assumptions no longer prevail and the social security system does not reflect the changed nature of the work force and particularly the women's role.

Now in addition to these changes, there have been several court decisions that have altered the context in which the committee needs to look at this. Since the *Wiesenfeld* decision a father is able to receive mother's benefits if his wife dies, and under the *Goldfarb* decision the dependency test is eliminated for men.

Under the *Goldfarb* decision the group almost without exception that gains benefits are male government employees, Federal Government employees or government employees not covered by social security, married to women who are working and are covered by social security.

Well, the administration has proposed a solution to the court decisions which we find to be totally unrealistic and, in fact, promises to offer some very bizarre results if the administration proposals should be adopted.

The proposal is to establish a variation of the dependency test under which income would be considered over a 3-year period. An individual would pass the dependency test if he or she were found to be earning less than the spouse upon whom he or she was claiming dependency. It is our view that dependency is an artificial concept in today's work world and a very arbitrary method of limiting participation.

Just taking a 3-year period arbitrarily out of the entire lifetime of a married couple will not reflect their economic relationship.

I have now a series of examples about the consequences that would flow from adoption of the administration proposal. I would like to read them because I think they are very important.

First, husband (H) worked his entire life in covered employment until age 61 when he lost his job. His wife (W), the same age, worked periodically at part-time jobs, but most of the time stayed home raising their three children. When H lost his job, W luckily found a full-time job to keep them going for 4 years until they turned 65.

Looking 3 years back to test the "dependency" of W on H, we find that W did, in fact, earn much more than unemployed H. She fails test and, because she does not qualify for a benefit from her own limited earnings, has no retirement income at all and no dependent benefit when H dies a few years later.

Second, 35-year-old H worked 10 years in covered employment when he decided to go back to school to finish 2 years left on a college degree. W went to work to support H and their two small children. Three years later, H dies and W applies for a mother's benefit.

W fails the dependency test because during the 3-year period prior to her husband's death, she earned more than he. She won't be entitled to a widow's benefit when she reaches age 60 either, as she would be under present law.

Third, H and W are divorced at age 55 after 30 years of marriage. During most of those 30 years, W worked in the home so has only a few quarters of covered employment. H worked his entire life in covered employment. After the divorce, W lives on alimony for a few years and then, at age 58, takes a part-time job.

At retirement age, W still doesn't have enough quarters to qualify for her own social security benefit. She files for a divorced wife's benefit. The administration plan makes no provision for how the dependency test would apply to W. What 3 years would be viewed?

Three years prior to retirement age when there was no economic relationship between the two at all?

Fourth, anticipating reduced income, 3 years before H reaches age 65 his younger wife (of 4 years) goes into real estate. W does well and earns as much as H for the 3 years before his retirement and continues working in the business for another 4 years until she reaches retirement age.

W does not have enough quarters to be entitled to her own old-age benefit. She applies for a wife's benefit and fails the dependency test because during the 3 years prior to H's retirement, W did not earn less than H.

Fifth, H and W have five children and both work full time in covered employment. W earns slightly more than H. H is fully insured with 40 quarters of work in covered employment when he dies.

W applies for mother's benefits, wondering how she can replace her husband's help in the home raising their five children and how she can replace his earnings critical to the family. She fails the dependency test because she was not earning less than he during the 3 years prior to his death.

In all of the above situations, the people denied benefits under this dependency test are not denied benefits under present law and were not denied benefits before either *Goldfarb* or *Wiesenfeld*. None of them are male Government employees. All of them are women. In none of the examples is a 3-year dependency test relevant to the lifetime economic relationship of the couple.

As the Justice Department's Task Force on Sex Discrimination notes, "The fundamental problem with the current social security system is its inability to cope with the employment patterns of the majority of women who are neither full-time homemakers nor full-time employees." The administration plan exacerbates a problem it purports to alleviate.

Mr. JACOBS. We will adjourn and resume in 13 minutes.

[Brief recess.]

Mr. JACOBS. You may proceed.

Mr. FRASER. Mr. Chairman, just before the break for the vote on the floor of the House I had given examples of the ways in which the 3-year dependency test would produce some very bizarre and, I am sure, unintended results. I was quoting the Justice Department Task Force on Sex Discrimination.

In their report they go on to say :

The current social security system treats the worker as an individual for the purpose of building an earnings record, and as part of a family unit with "dependents" for the purpose of paying benefits. Almost all of the inequities in the current system can be traced directly to this approach, and almost all of these inequities can be eliminated by treating the family as a unit for the purpose of building earnings records, as well as for the purpose of paying benefits.

This can be accomplished through earnings splitting.

Earnings splitting is based on the fundamental assumption that marriage is an economic partnership. Each partner contributes to the economic stability of the unit and both enable the income to be earned. Both should have access to the benefits associated with that income.

Various earnings-splitting plans are under study right now in the Departments of HEW and Justice. The Urban Institute has under-

taken research in the area of equal treatment, concluding preliminarily that earnings splitting is the most equitable direction to follow in ridding the system of its sex bias.

My wife, Arvonne, and I developed our own earnings-splitting plan which we first introduced in the 94th Congress. My colleague, Congresswoman Martha Keys, has found our plan constructive and joined me last February when the bill was introduced in the 95th Congress. Since then 56 other House colleagues have expressed their support of this concept by their cosponsorship. My office has been flooded with mail from throughout the country requesting information about our plan and offering encouragement and support.

The Fraser/Keys plan credits each spouse annually with an equal portion of the wages earned by the couple. Through the years they are married, a couple will have identical wage records. For the years homemakers are not working in covered employment they would maintain wage records through the earnings of spouses who were.

Our plan creates portability in social security. Partners may marry, be widowed, divorce, or remarry without losing benefits. Wage records belong to individuals, not to marriages.

Now I would like to deal with the cost question.

First, a woman is entitled to mother's benefits if her spouse dies and she has a child less than 18 years of age. When the last child turns 18, the woman loses benefits and has no entitlement until age 60. Benefits are lowered in the Fraser/Keys plan to age 50 because a woman's youngest child would turn 18 when the average woman was 50.

We would also expect that a woman under those circumstances would gradually work herself back into the work force and, thus, her income from social security would phase out. Gradually, under our bill, every adult would have his or her own earnings record developed.

Children's benefits would be affected because under our proposal the earnings from both parents would be taken into account in enabling children to receive benefits.

The third cost item is that we would extend disability protection to homemakers. Under the present system a woman working in the home who becomes disabled is not entitled to disability benefits and we think there should be disability benefits.

Mr. Chairman, that is essentially what we wanted to say this morning. We don't think the administration method of desexing social security is workable. We would urge the committee to consider the merits of earnings splitting. We recognize this is beyond the scope of H.R. 8218, but I would suggest that if you could require that HEW establish a task force to study earnings splittings and develop recommendations—they could report their findings back in 6 months.

Let me just make one point on the cost. The administration anticipates a cost of \$70 million to administer their dependency test in their first year of operation. The Office of the Actuary estimates the savings from the test will be less than \$100 million in the first year, not considering the administrative costs. The net savings on the administration approach would be only \$30 million, which hardly makes it worthwhile to put into the law a provision which would work thoroughly and justified hardship in particular situations.

So we would urge that rather than going that route where the cost savings are incidental, that the committee seriously move ahead with

an income earnings splitting approach, asking HEW to move ahead on this, reporting back within a few months.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. DONALD M. FRASER, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MINNESOTA

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before you. I address my remarks to the portion of H.R. 8218 that purports to eliminate gender-based distinctions in the social security system.

The Supreme Court compelled the Administration to include an "equal treatment" section by recent rulings that old-age survivor and spouse benefits must be available to widowers and husbands on the same basis they are currently available to widows and wives. The Administration "solution," however, is no solution at all. It will deny benefits to many women who, under current law (with or without the Supreme Court decisions), are entitled to them and it fails to address the full range of inequity permeating the system.

My remarks will review the assumptions of the program as it was developed in the 1930's and 1940's and point out how those now out-dated assumptions create questions of fairness. Secondly, I'll review the actions of the Supreme Court, identifying the population affected and the cost of bringing them into the system. Thirdly, I'll describe how the Administration attempts to revise the system to exclude this new population of beneficiaries and then identify the actual victims of their plan. Finally, I'll discuss earnings-splitting as the most comprehensive and practical alternative.

SOCIAL SECURITY AND DEPENDENCY

Social security was originally developed as a family protection program. The system's architects assumed that most workers were men with dependent wives and children and that most marriages lasted through lifetimes.

In the 1930's and 1940's, when protection for dependents was added to the list of those insured, these assumptions were reasonable. Today, they are out-of-date. The system of the 1930's fits neither the world of work nor contemporary economic relationships between spouses in the 1970's.

Between 1940 and 1975, the labor force participation rate for married women rose from 15 percent to over 40 percent. Half of all married women under age 60 were in the labor force in 1975. Presence of children does not stop married women from working either: in 1975, 52 percent of wives with school-age children, and 37 percent of those with pre-school children were in the labor force. Their earnings kept their families out of poverty by contributing over one-fourth to the total family income which did not exceed an average of \$11,400 in 1975 for two-earner couples. Clearly, dependent wives are a norm of the past.

Most marriages no longer last forever. In 1940 the ratio of divorces to marriages per year was about 1 to 6. In 1975 it was 1 to 2.

A system grounded in the assumption that wives don't work and marriages last forever runs awry in the reality of today. Example: The current system disregards the social security contributions of married working women by entitling working and non-working wives to a Wife's Benefit regardless of their past earnings. One woman works and makes contributions for the same benefit the woman next door is getting "free."

Example: Under the current system a woman loses all rights to dependent benefits if she divorces her husband before 20 years of marriage. The 20-year rule disregards the contribution of a homemaker to the economic unit during child-rearing years, which are usually the early years of a marriage. The increase in the number of divorces during the first 20 years of marriage leaves many homemakers without access to social security through their husband's wage record, even though they may have spent their prime wage-earning years working in the home raising children. On the other hand, a married woman need only 1 year of marriage behind her before she is entitled to wages from her new spouse's record.

Example: The "recency of work" requirement for entitlement to Disability Benefits excludes working women who generally move in and out of the labor force and may not accrue the necessary 20 quarters of coverage out of the 40 preceding the disability.

Example: Entitlement amounts are based on average monthly earnings computed for quarters elapsing after the worker (or non-worker) turns age 21. Zero-earning years of women working in the home pull the average down and along with it, their benefit amounts.

Example: The present system prevents a wife from receiving her dependent benefit entitlement (Wife's Benefit) until her husband applies for his Old-Age Benefit. If he continues to work after he reaches entitlement age, his wife cannot collect her dependent benefit, reinforcing the notion that a homemaker role is a dependent, secondary role from which one need not retire.

These examples demonstrate how the present system is "dated" by changing patterns of work and family life. None of these situations are addressed by either the Supreme Court or the Administration's H.R. 8218.

ACTIONS OF THE SUPREME COURT AND THEIR CONSEQUENCES

Prior to a Supreme Court ruling in March 1975 (*Weinberger v. Wisenfeld*) a husband of a fully insured woman was not entitled to a father's benefit upon the death of his wife while a wife of a fully insured man was entitled to a Mother's Benefit if her husband died. Since *Wisenfeld*, a father is able to receive Mother's Benefits, if his wife dies. However, unlike mothers, fathers still are not entitled to Mother's Benefits if their wives retire or become disabled. Since the Court ruling in 1975, 14,000 widowers applied for Mother's Benefits, adding \$17 million to the cost of Survivors Insurance.

Prior to Supreme Court decisions in March 1977 (*Califano v. Goldfarb* and *Califano v. Silbowitz*, referred to hereafter as *Goldfarb*) a husband or widower had to prove he was receiving at least one-half of his support from his fully insured wife (or contributing less than one-fourth to their combined income) to become entitled to Husband's or Widower's Benefits derived from his wife's wage record. This "dependency test" was not imposed on a wife or widow who is 'automatically' entitled to Wife's or Widow's Benefits if her spouse is fully insured.

The dependency test was administered generally by looking at the income of both spouses over the 12 month period preceding the event that caused the entitlement, i.e. her retirement, death or disability.

Theoretically, *Goldfarb* shouldn't affect too many men: an individual can receive only one benefit even if entitled to more than one. Most men who, with *Goldfarb*, became entitled to a dependent benefit from their wife's wages, were already entitled to an Old-Age Benefit themselves. No doubt their own Old-Age Benefit would be higher than a dependent benefit (because women's wages are lower) so *Goldfarb* should have little impact.

The only population affected by *Goldfarb* would have to be men with no entitlement to social security prior to the decision because (1) they did not have the required number of quarters to qualify for their own Old-Age Benefit, and (2) they failed the dependency test to qualify from their wife's records. Almost without exception, this group is male government employees married to women fully insured under the social security system.

The Office of the Actuary estimated that *Goldfarb* would create 520,000 new beneficiaries: 300,000 men entitled to Husband's Benefits and 220,000 men entitled to Widower's Benefits. They also anticipated that half of these men would apply for benefits in fiscal year 1977. Actual applications, however, through July 13, 1977, total only 45,000, significantly less than the number estimated by the Actuary. The Office of the Actuary is currently under-going considerable downward revision of their original estimates that *Goldfarb* would cost the system \$220 million in 1977 and \$540 million in 1978.

One might note that costs are held down because husbands generally don't survive wives—there are fewer widowers than widows and women's wages are generally low—a dependent benefit derived from a low wage will be a very low benefit.

ADMINISTRATION SOLUTION AND ITS CONSEQUENCES

Goldfarb creates a problem by providing access to social security to government workers married to women covered by social security. The obvious solution is social security coverage of government employees. Obvious or not, it isn't likely to happen.

The Administration proposes to re-establish a variation of the dependency test for Widower's and Husband's Benefits and extend it to Wife's, Widow's and

Mother's Benefits. Extending the test to Mother's Benefits is intended to limit the number of fathers taking advantage of *Wiesenfeld*.

Instead of looking at income over the 12 month period immediately preceding the event that causes entitlement, the new test would consider income over a 3 year period. An individual would "pass" the dependency test if s/he were found to be earning less (instead of one-fourth) than the spouse upon whom s/he was claiming dependency.

"Dependency" is an artificial concept in today's work world and an arbitrary method of limiting participation in the social security system. A 3 year period plucked from entire life-times will not reflect a couple's economic relationship.

In addition, women's work lives have always been more fluid than men's. The accepted work role for men is stable and long-term. A woman moves in and out of the labor force depending on her own and family needs. If she makes the wrong move into the labor force 3 years prior to her husband's retirement, death, or disability (of which only retirement is predictable), she may risk her dependent benefits.

The real culprits to catch with this dependency test are male government employees. However, following are some of the possible victims of the plan:

1. Husband (H) worked his entire life in covered employment until age 61 when he lost his job. His wife (W), the same age, worked periodically at part-time jobs but most of the time stayed home raising their three children. When H lost his job, W luckily found a full-time job to keep them going for 4 years until they turned 65.

Looking 3 years back to test the "dependency" of W on H, we find that W did, in fact, earn much more than unemployed H. She fails the test and, because she does not qualify for a benefit from her own limited earnings, has no retirement income at all and no dependent benefit when H dies a few years later.

2. Thirty-five year old H worked 10 years in covered employment when he decided to go back to school to finish two years left on a college degree. W went to work to support H and their 2 small children. Three years later, H dies and W applies for a Mother's Benefit.

W fails the dependency test because during the three year period prior to her husband's death, she earned more than he. She won't be entitled to a Widow's Benefit when she reaches age 60 either, as she would be under present law.

3. H and W are divorced at age 55 after 30 years of marriage. During most of those 30 years, W worked in the home so has only a few quarters of covered employment. H worked his entire life in covered employment. After the divorce, W lives on alimony for a few years and then, at age 58, takes a part-time job.

At retirement age, W still doesn't have enough quarters to qualify for her own social security benefit. She files for a divorced Wife's Benefit. The Administration plan makes no provision for how the dependency test would apply to W. What three years would be viewed? Three years prior to retirement age when there was no economic relationship between the two at all?

4. Anticipating reduced income, 3 years before H reaches age 65 his younger wife (of 4 years) goes into real estate. W does well and earns as much as H for the 3 years before his retirement and continues working in the business for another 4 years until she reaches retirement age.

W does not have enough quarters to be entitled to her own Old-Age Benefit. She applies for a Wife's Benefit and fails the dependency test because during the 3 years prior to H's retirement, W did not earn less than H.

5. H and W have 5 children and both work full-time in covered employment. W earns slightly more than H. H is fully insured with 40 quarters of work in covered employment when he dies.

W applies for Mother's Benefits, wondering how she can replace her husband's help in the home raising their 5 children and how she can replace his earnings critical to the family. She fails the dependency test because she was not earning less than he during the 3 years prior to his death.

In all of the above situations, the people denied benefits under this dependency test are not denied benefits under present law and were not denied benefits before either *Goldfarb* or *Wiesenfeld*. None of them are male government employees. All of them are women. In none of the examples is a 3 year dependency test relevant to the life-time economic relationship of the couple.

The Court in *Goldfarb* classified "dependency" in the social security system as an "old notion" and "archaic." People simply aren't economically dependent on each other for whole life-times anymore. Workers of both sexes move in and out of the labor force: couples exchange child-rearing and bread-winner roles, they

put each other through school, they face unemployment, or they both work side-by-side to keep from sinking into poverty.

As the Justice Department's Task Force on Sex Discrimination notes, "the fundamental problem with the current social security system is its inability to cope with the employment patterns of the majority of women, who are neither full-time homemakers nor full-time employees." The Administration plan exacerbates a problem it purports to alleviate.

ALTERNATIVE: EARNINGS-SPLITTING

The Task Force further finds that, "the current social security system treats the worker as an individual for the purpose of building an earnings record, and as part of a family unit with "dependents" for the purpose of paying benefits. Almost all of the inequities in the current system can be traced directly to this approach, and almost all of these inequities can be eliminated by treating the family as a unit for the purpose of building earnings records, as well as for the purpose of paying benefits." This can be accomplished through earnings-splitting.

Earnings-splitting is based on the fundamental assumption that marriage is an economic partnership. Each partner contributes to the economic stability of the unit and both enable the income to be earned. Both should have access to the benefits associated with that income.

Various earnings-splitting plans are under study right now in the Departments of HEW and Justice. The Urban Institute has undertaken research in the area of equal treatment, concluding preliminarily that earnings-splitting is the most equitable direction to follow in ridding the system of its sex bias.

My wife, Arvonne, and I developed our own earnings-splitting plan which we first introduced in the 94th Congress. My colleague, Congresswoman Martha Keys, has found our plan constructive and joined me last February when the bill was introduced in the 95th Congress. Since then, 56 other House colleagues have expressed their support of this concept by their co-sponsorship. My office has been flooded with mail from throughout the country requesting information about our plan and offering encouragement and support.

The Fraser/Keys plan credits each spouse annually with an equal portion of the wages earned by the couple. Through the years they are married, a couple will have identical wage records. For the years homemakers are not working in covered employment they would maintain wage records through the earnings of spouses who were. Our plan creates portability in social security. Partners may marry, be widowed, divorce or remarry without losing benefits. Wage records belong to individuals, not to marriages. Following are examples of how our plan would work in various situations.

Case 1: The Social Security benefits of a woman who was married and a homemaker for 19 years and then divorces.

Current system.—The woman loses any entitlement to Social Security benefits from her husband's wages because she was not married for 20 years.

During her 19 years working in the home she developed no wage record of her own from which she could derive her own Old-Age Benefit. She is left with nothing. If she had lasted in her marriage another year she would have been entitled to a Wife's Benefit from her former husband's wage record when she reached retirement age.

Fraser/Keys.—The woman, during her 19 years as a homemaker, would have been developing her own wage record through the wages of her spouse working in covered employment. When she retired (or became disabled) she would be entitled to benefits from her own wage record, developed during her 19 years as a homemaker.

Case 2: The Social Security benefits of a homemaker who becomes disabled.

Current system.—A homemaker is not entitled to disability benefits unless she has worked in covered employment at least 5 of the last 10 years. The family is not insured against the loss of her homemaker services.

Fraser/Keys.—A disabled homemaker may be entitled to benefits if she has contributed to her wage record—either from her own earnings or through the earnings of her spouse during 5 of the last 10 years.

Case 3: A farm couple with the husband working on the farm, paying the self-employment tax and the wife working in covered employment in a nearby town. During drought years they have no or very low farm income.

Current system.—Both husband and wife would be developing wage records from their respective earnings. The years the husband has no or low farm income

his wage record shows zero or low earnings. When his earnings are average to determine his benefit level, those low years are part of the average which, of course, bring his average down and subsequently his Old-Age Benefit level.

His wife will be entitled to an Old-Age Benefit from her own earnings as well as a Wife's Benefit equivalent to half of her husband's Old-Age Benefit. She'll receive whichever is higher.

Fraser/Keys.—Again, both husband and wife would develop wage records but from combined—not respective—earnings. They both would be credited with an equal portion of their combined salaries.

During the years when farm income was low, the husband would be continuing his wage record with his wife's earnings in covered employment. By not disturbing the continuity of his wage record, his average will yield a higher benefit and he will not be penalized by the low-earning years of the drought.

Case 4: A woman works in the home, raising children for several years and then, in mid-life, begins to work in covered employment.

Current system.—Upon retiring, the woman's Old-Age Benefit will be computed by averaging her earnings per year since 1950. Since she has several zero earning, child-rearing years, her average will drop considerably and drag her benefit level down with it.

Fraser/Keys.—If, during her years in the home, the woman's husband worked in covered employment, she would build her wage record through his earnings. She would not have zero earning years reflected on her wage record but a portion of her husband's earnings instead.

Our plan rids the system of a dependency concept in adult benefits. When fully implemented, each spouse will have his or her own wage record on which to collect benefits, obviating dependency-based benefits.

The Fraser/Keys plan would be relatively inexpensive. We don't create a whole new class of beneficiaries. Rather, we redistribute benefits equitably. Last February your Committee requested departmental reports on the Fraser/Keys bill from Treasury and HEW. The reports with cost analyses are not back from those agencies. However, we do have some idea of where the costs would arise.

First, as a transition feature, Fraser/Keys lowers the age at which a widow or widower could collect Survivors Benefits from 60 to 50. The provision is primarily for the benefit of a woman who becomes a "displaced homemaker" from losing her breadwinner spouse.

Currently, a woman is entitled to Mothers' Benefits if her spouse dies and she has a child less than 18 years of age. When the last child turns 18, the woman loses benefits and has no entitlement until age 60. Benefits are lowered in the Fraser/Keys plan to age 50 because a woman's youngest child would turn 18 when the (average) woman was 50.

After a period of disorientation it is likely this woman would go to work. These benefits would be subject to the earnings limitation so would be phased out as her participation in the labor force became more intense.

This provision is a transition feature. As noted earlier, after full implementation, all adults would have their own Social Security wage records built upon their own life experiences of working in covered employment or being married to someone who has a work-life in covered employment.

The cost of this provision could be estimated by computing the number of widows between the ages of 50 and 60 (1.4 million in 1970) who also are not disabled, not entitled to benefits under the present system and have no children under age 18. The group's average income could be used to estimate the degree to which they would use Survivor's Benefits. We do know that the median income of widowed women between the ages of 35 and 64 in 1975 was \$13,700, earnings too high to withstand the earnings test.

Second, Children's Benefits are also affected. Under the present system, children are entitled to benefits if an insured parent retires, becomes disabled, or dies. The present system prevents any beneficiary from receiving more than one benefit regardless of the number of entitlements.

The Fraser/Keys bill lifts this prohibition to allow children to receive benefits from both parents' records. Since families with both spouses present will have been income splitting, their wage records will be similar.

If both parents either die, retire, or become disabled, each child would receive a benefit from both wage records. Total benefits would still be subject to the Family Maximum.

Cost of this provision can be determined by computing the number of children less than age 18 (or students less than age 22) who have parents who both are either retired, deceased, or disabled.

Finally, Disability protection would be extended to homemakers. Under the present system, a woman working in the home, though married to a man working in covered employment, is not entitled to Disability Benefits.

Cost of this provision could be estimated by learning the number of disabled homemakers less than 65 years of age with spouses protected by Disability Insurance. We anticipate there would be few.

CONCLUSIONS

Mr. Chairman, the Administration method of "desexing" social security is destructive. It won't work, it defies reality, it avoids the range of issues that need be addressed by equal treatment plans. I believe it is senseless to set up the complicated and costly administrative mechanism this dependency test requires, only to dismantle it a few years from now in favor of another more thorough and thoughtful approach.

Instead, I urge the Committee to consider the merits of earnings-splitting. I realize such a reform is beyond the scope of H.R. 8218. However, the limited reform proposed in the Administration plan further entrenches dependency in a system that has out-grown the concept. Accepting the Administration plan is a retreat from progress.

I urge you to require, in place of the "Revised Test for Dependent's Benefits" in H.R. 8218, that the Department of Health, Education and Welfare establish a Task Force to study earnings-splitting and develop recommendations with the Justice Department's Task Force on Sex Discrimination. Both agencies have already developed favorable analyses of earnings-splitting, leading each to intensify their preliminary work. The Task Force could report findings back to the Committee in six months.

The Administration anticipates a cost of \$70 million to administer their dependency test in its first year of operation. The Office of the Actuary estimates the savings from the test will be less than \$100 million in its first year, not considering the administrative costs. Net savings then, will be less than \$30 million, only .03 percent of total OASI benefits paid in one year!

While I do not want to undermine the seriousness of the system's diminishing base, I suggest that the relative miniscule savings and devastating effects of the plan leave us better off doing nothing in the interim between now and sound reform.

I encourage you to demonstrate your willingness to address equal treatment problems in the social security system by suspending action on *Goldfarb* and *Wisensfeld*. An HEW study of earnings-splitting anticipates substantive Committee action on equal treatment in the near future.

Mr. JACOBS. Thank you very much, Mr. Fraser.

Mrs. Keys, would you identify yourself?

Mrs. KEYS. I am Congresswoman Martha Keys of Kansas.

My good colleague has done such a good job of outlining the approach that I agree in thinking it is much better than the proposal by the administration in 8218 to involve the gender-based problem of survivors' benefits.

I am going to try to summarize very briefly, but I would like that my entire testimony be included in the record.

Mr. JACOBS. Without objection, so ordered.

STATEMENT OF HON. MARTHA KEYS

Mrs. KEYS. I would like to add a few facts to some of the changes that have occurred in American life since the 1930's when the social security system was first begun. We now find that nearly half of the families in the United States are supported by husband and wife and that women contribute to the economic stability of the family both

through their work inside and outside the home. Over 90 percent of the women in America will have worked outside the home during some portion of their lives.

While conditions have changed dramatically, the social security system continues on its way operating under its original assumptions. Congressman Fraser gave some examples of the inequities that would occur if the 3-year dependency test which is proposed in 8218 were used to solve the survivors benefits.

I would like to cite just a few examples of the things that are occurring now because of the outmoded assumptions that are in our social security program.

Example No. 1. Mrs. J. was divorced after 19 years and 7 months. During her years of marriage, she had worked in the home and raised three children. Because her marriage did not last another 3 months, she was deprived of all benefits.

Example No. 2. Mrs. M. is 8 years older than her husband. While she has worked outside the home, she does not have the requisite number of quarters to make her eligible for her own benefits, thus she must wait for her husband's retirement. He is now 60, she is 68. If he does not retire until he is 65, she will be 75 before she receives any benefits at all.

Example No. 3. In a similar case, Mrs. H. is divorced from her husband after 25 years of marriage. While she is now working, she will not have the requisite number of quarters before she reaches retirement age. Her former husband owns a business, has no intention of retiring in the foreseeable future. She will have to work beyond her own retirement age at whatever work is available because she will not be eligible for benefits based upon her former husband's record until he decides to retire. The example of such anomalies as this are endless.

When the Supreme Court action struck down the present dependency system or at least the assumptions about the dependency that are in our social security laws, the proposal that came to require a 3-year dependency test just does not seem to equitably answer the situation at all.

I believe that the method of income splitting would resolve both many of the problems of the present system as well as the particular problem of the survivors system.

By providing for yearly computation of earnings, it eliminates the dependency concept altogether.

A divorced woman who is married less than 20 years simply carries her own record with her and does not suffer a reduction in benefits if she remarries. With income splitting, a woman need not wait until her husband retires before she can retire. A homemaker will be able to establish her own earnings record and both she and her family will be covered in case of her disability or death.

I cannot too strongly state my opposition to the 3-year dependency test proposed by the administration. In an effort to assure that men who have supported themselves throughout their lives in noncovered employment do not become eligible for dependents benefits, the Social Security Administration has proposed a test which will unjustly penalize those who can least afford it.

I hope that the subcommittee will strongly oppose the institution of this provision. It is very harmful to a significant group of people and it fails to address any of the larger problems proposed by the dependency provisions.

While I do not support the present concept of presumptive dependency for women, the proposal to impose an arbitrary dependency test on both spouses seems to be the worst of all possible worlds.

If for any reason whatsoever those 3 years are not representative of the lifetime of the recipient, the working lifetime, then that recipient is deprived of all benefits. I therefore would just hope that the subcommittee and the full committee will reject the harshness of the administration's proposal and take this opportunity to review the appropriateness of continuing a dependency benefit system.

This would require a careful review by HEW. But there is already a large volume of expert information to draw upon. I would like to strongly recommend that HEW do this and report back to Congress within 6 months with its recommendations for a comprehensive revision of the dependency system.

I would merely like to point out that though there are problems that can be found with the Fraser-Keys bill and with its approach, they are all problems that can be solved. In looking to the particular area of problems with benefits, the income-splitting approach which provides the individual record for each individual person and allows the benefits to be pinpointed carefully makes it very simple to address the problems of benefits which may, indeed, not be adequate in a particular area, because it pinpoints them much more carefully.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. MARTHA KEYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

In the 1930's when the social security system was conceived, the vast majority of American families were made up of a worker husband and his dependent wife and children. Few women worked outside the home and income was generally a one-way transfer from breadwinner to dependent. Understandably, the social security system was built upon this model.

Over the last 40 years, however, the American family has changed. Today nearly half of the families in the U.S. are supported by both husband and wife. Women contribute to the economic stability of the family through their work both inside and outside the home. Over 90 percent of the women in America will have worked outside the home during some portion of their lives.

While conditions have changed dramatically, the social security system continues to operate upon its original assumptions. A woman is entitled to wife's or Widow's benefits based upon a dependency relationship to her husband. A divorced woman must have been married at least 20 years before she is entitled to such benefits, and those benefits may be terminated if she remarries. If a woman reaches retirement age before her husband, she is not entitled to benefits until he retires. Furthermore, there is no provision for Disability or Survivor's benefits for the families of women who have worked in the home. A wife's life and health are presumed to have no economic value to the family.

The application of these outmoded assumptions of today's world has caused injustice and hardship for many women and their families. Let me cite a few examples which have come to my attention:

1. Mrs. J was divorced after 19 years and 7 months. During her years of marriage she had worked in the home and raised three children. Because her marriage did not last another 5 months, she was deprived of all benefits.

2. Mrs. M is 8 years older than her husband. While she has worked outside the home, she does not have the requisite number of quarters to make her

eligible for her own benefits. Thus, she must wait for her husband's retirement. He is now 60 and she is 68. If he does not retire until he is 65, she will be 73 before she receives any benefit.

3. In a similar case, Ms. H is divorced from her husband after 25 years of marriage. While she is now working, she will not have the requisite number of quarters before she reaches retirement age. Her former husband owns a business and has no intention of retiring in the foreseeable future. She will have to work beyond her own retirement age at whatever work is available because she will not be eligible for benefits based upon her former husband's record until he decides to retire.

The examples of such anomalies are endless.

The U.S. Supreme Court recently struck down, as discriminatory, a provision based upon the system's outdated assumptions about dependency. In *Califano v. Goldfarb*, — U.S. — (March 2, 1977) and a companion case, the court concluded that it was unconstitutional to require a male applicant for Husband's or Widower's benefits to prove that at least half his support came from his wife when a female applicant is not required to show similar proof.

This is the second time in 2 years that the Supreme Court has struck down a provision of the Social Security Act for its discriminatory assumptions based upon sex. We can continue to deal with these issues with stop-gap solutions or we can take a serious look at a comprehensive revision of the system.

I have joined Congressman Fraser in sponsoring the Equity in Social Security for Individuals and Families Act because, in my view, it represents the best approach to revising the system's wornout assumptions. Briefly, the bill permits both partners in a marriage to establish independent, portable earnings records based upon the combined family income. Each spouse is credited annually with an equal share of the family income earned in covered employment.

This method of income-splitting resolves many of the problems with the present system. By providing for yearly computation of earnings, it eliminates the dependency concept altogether. A divorced woman who is married less than 20 years simply carries her own record with her and does not suffer a reduction in benefits if she remarries. With income-splitting, a woman need not await until her husband retires before she can retire. A homemaker will be able to establish her own earnings record and both she and her family will be covered in case of her disability or death.

While the Fraser proposal offers a comprehensive revision which solves a host of problems in the present system, the Administration's response is a patchwork job which creates more problems than it solves. Income-splitting eliminates the need for arbitrary limitations. The 3-year dependency test just creates one more.

I cannot state too strongly my opposition to the 3-year dependency test proposed by the Administration. In an effort to assure that men who have supported themselves throughout their lives in non-covered employment do not become eligible for dependent benefits, the Social Security Administration has proposed a test which will, in fact, unjustly penalize those who can least afford it. I hope that the Subcommittee will strongly oppose the institution of this provision. Not only is it harmful to a significant group of people but it fails to address any of the larger problems posed by the dependency provisions.

A number of groups have independently arrived at income-splitting as the best solution to the many problems of the dependency system. The Justice Department Task Force on Sex Discrimination has developed an income-splitting concept as its primary alternative in eliminating sex bias from the Social Security Act. Ms. Nancy Gordon from the Urban Institute has done a comprehensive analysis of a variety of proposals including those in a number of foreign countries and has concluded that income-splitting represents the most effective approach to reform.

While I do not support the present concept of presumptive dependency for women, the proposal to impose an arbitrary dependency test upon both spouses seems to be the worst of all possible worlds. If, for any reason whatever, those 3 years are not representative of the lifetime of the applicant, he or she is deprived of all benefits.

There is, in fact, a great likelihood that the 3 years preceding the event which causes eligibility will not be representative of the individual's lifetime record. A woman is very likely to have been a family's major breadwinner during the 3 years prior to her husband's death. Often a woman, working at very low pay, will have to take a job to make ends meet while her husband is ill. Under the pro-

posed test, she will be left with no benefits to the detriment of both herself and her family.

The same situation often occurs in the years prior to a man's retirement. He slows his activity, and she carries the load. If she has not worked a sufficient number of quarters over her lifetime, she will not be eligible for dependent benefits. The result is that the couple must live on significantly less income. Should he die, she is left with nothing.

I hope that the Subcommittee will reject the Administration's harsh proposal and take this opportunity to review the appropriateness of continuing the dependency benefit system. Although this requires a careful review of the program by HEW, there is already a large volume of expert information to draw upon. Congressman Fraser and his staff, the Justice Department, and others have all done a great deal of work in this area. I strongly recommend that the Subcommittee require HEW to do a thorough review of the subject and report back to Congress in 6 months with its recommendations for a comprehensive revision of the dependency system. At that time, I hope we will be prepared to adopt a proposal such as income-splitting which will offer just and equitable treatment to both men and women under Social Security.

Mr. JACOBS. Thank you, Mrs. Keys.

Ms. Gordon, identify yourself for the record, please.

STATEMENT OF NANCY M. GORDON

Ms. GORDON. Thank you, Mr. Chairman. My name is Nancy Gordon. I am an economist and senior research associate with the Urban Institute, which is a nonprofit research organization here in town.

The testimony I am going to present today should not, however, be attributed to the Urban Institute or any of its sponsors.

I am currently concluding a research project that is primarily an evaluation of earning-splitting options and of homemaker credit provisions.

I think the Supreme Court chose one particular approach to the question of equal treatment of men and women that is appropriate for the Court, but which does not address the major problems that we are facing today. The administration has responded to the increased costs associated with the Court's rulings by proposing a dependency test. I would like to concur with the statements made by Congressman Fraser and Congresswoman Keys about the difficulties that would be apparent with the dependency test. I don't believe in the concept of dependency at all, but I think that the administration's proposal is a particularly poor way of using the dependency concept to solve the problem of equal treatment.

The two problems that I see that the social security system is facing right now are the unequal treatments of one-earner versus two-earner couples, and the inadequate protection of divorced women.

We all have our favorite statistics to demonstrate that the world is changing dramatically. One of mine is that among women with children under 6, over 39 percent are in the labor force. In fact, when we look at all American families and try to find out how many of them fit the traditional model of a husband who is working and a woman who stays home and cares for dependent children, we find that only 16 percent of American families fall into this category. Yet, the social security system was designed precisely to protect this kind of family; that is one of the major reasons that it is no longer doing a good job.

We have already heard the statistics projecting that between a third and a half of current marriages will end in divorce. That is to me

rather startling, but from the people I know, it is certainly a realistic estimate.

This instability in marriages is a real problem under the current system which requires that marriages last at least 20 years before a woman can claim a benefit based on her ex-husband's earning records. Last year, of all the divorces that were granted, only 9 percent involved a marriage that lasted that long. That leaves an awful lot of divorced women who are not going to be able to claim benefits based on their ex-husband's records. Some of them will have benefits on their own records, although typically these will be low because of their years out of the labor force. Some of them will remarry, although in the last 10 years, when the divorce rate doubled, the remarriage rate for women fell. So, this is not likely to be a source of solution.

Now, the two competing forms of proposals to solve these problems—other than the dependency tests which I think are really quite terrible—are earnings-splitting and homemaker credits.

Earnings-splitting, as you have already heard, would add up the taxable earnings of the two spouses and credit each spouse with half. Benefits would then be computed for each individual based on his or her own record. The Federal Republic of Germany has recently adopted a law that does exactly this for couples who divorce. The law took effect July 1, 1977.

The second type of proposal would provide homemaker credits to women who stay home. Different proposals have different kinds of eligibility conditions: Some would provide credits only to those parents caring for young children; others would provide credits for women who remain home—perhaps women who worked less than full-time employment.

The research project I am just concluding is looking at a variety of different versions of these proposals in order to find out what the effects would be on different groups of people. My prepared testimony goes into my major assumptions. I think there are two things that I ought to make explicit here in the spoken testimony:

First, when I was comparing different options, I scaled the benefits so that the total expenditure on benefits relative to the taxes as collected would be the same. It does not make sense to me to compare proposals that spend different amounts of money. We can increase everybody's benefits if we spend enough. So, when I am talking about the results, it is important to remember that if, in fact, the proposal were put in without this scaling, the costs might go up considerably, which would in turn possibly change the relative benefits under different options.

The second point is that to figure out what is really going to happen with something like a modified social security system, you need to look at people over their entire lives in order to take account of the changes that occur: marriage, divorce, having children, working, and staying home. To find longitudinal data that enable you to look at people over time is somewhat difficult.

Luckily there is one such data base. It was created by taking a random sample of people from the 1960 census and simulating what happened to each individual over time, matching the results in aggregate to what actually occurred between 1960 and 1974—during that period we do know what has happened—and then continuing the simulation out to the year 2000.

From this, a cohort of people was drawn who were 25 to 27 years old in 1960 and who will retire by the turn of the century when the system has become fully mature. By looking at this cohort of people, we can see what the different kinds of provisions would imply for them.

I looked at five different plans. One was a version of the current system, but I must confess I did decouple it and used wage indexing for the earnings records in computing benefits. I looked at an earnings splitting plan, two versions of homemaker credits plans, and a combination of credits and splitting.

I would like to tell you just what the results were.

First, all of the systems were equally progressive. The current system provides higher benefits for low-income individuals relative to taxes paid as compared with higher income individuals; all the modifications continued that progressivity essentially to the same extent.

Second, the earnings splitting option was by far the most effective at reducing the differential between one and two-earner couples.

Third, the earnings splitting option and the combination of splitting and homemaker credits were equally effective at providing protection for divorced women.

However, the proposal of combined earnings splitting and homemaker credits resulted in the most extreme differential between one-earner versus two-earner couples. So, given that I am interested in solving both problems at the same time, it was clear to me that the earnings-splitting option was doing the best job.

The only exception to these results occurred for the women in the lowest income category. If your income is sufficiently low, earnings splitting is not going to provide a very high earnings record. The homemaker credit given at the minimum wage, which is about \$5,000 a year, will result in higher benefits. However, it seems to me that providing adequate protection in retirement for those in the poorest income group would be better handled through something like supplemental security income rather than through the general provisions of the social security system that affects women in all income categories.

The conclusion that I reached based on these research results was that for those people in four of the five income categories, earnings-splitting would be by far the best alternative to pursue.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF NANCY M. GORDON, WASHINGTON, D.C.

My name is Nancy Gordon. I am an economist and a senior research associate with The Program of Research on Women at the Urban Institute, a non-profit research organization located in Washington, D.C. The testimony which I will deliver today reflects my own views and should not be attributed to the Urban Institute or its sponsors. I am currently concluding a research project that evaluates alternative proposals for modifying the retirement portion of the social security system, in which particular attention is given to the treatment of women. My remarks will be based primarily on the results of this research.

The issue that is being addressed here today is the equal treatment of men and women under the social security system. When the social security system was originally designed, its goal was to protect individuals who were assumed to spend most of their lives in a traditional family unit that consisted of a wage-earning husband, a homemaking wife, and dependent children. As a result, many provisions were included to provide benefits to women that were not available to similarly situated men. In particular, women were awarded dependents' and survivors' benefits automatically whereas men had to demonstrate financial de-

pendency upon their wives. Recently, the Supreme Court has ruled that these benefits must be provided to men in the same manner that they had been provided to women. These rulings are one response to the equal treatment question. However, they do not address two other major problems: unequal treatment of one-earner versus two-earner couples and inadequate protection for divorced women. Both of these problems are related to the recent and dramatic change in the role of women in American society.

One important aspect of this change has been that women have substantially increased their commitment to the work force. In 1975, 54 percent of all women between the ages of 20 and 64 were in the labor force. The corresponding figure for men was 90 percent. If one considers only married women whose husbands were present in the home, one finds that 44 percent of them were in the labor force in 1975. Even among women with children less than 6 years of age, 39 percent were in the labor force. In fact, only 16 percent of all American families consisted of a husband who worked and a wife who remained at home to care for dependent children. Looking at the statistics from another point of view, most women work to support themselves and their families. Single women, women who are heads of families, and women whose husbands earn less than \$7,000 a year comprise 48 percent of the female labor force. The large number of women in the labor force means that in the majority of families both spouses are paying social security taxes. However, in many cases their retirement benefits will be no higher than they would have been had one of the spouses remained at home paying no social security taxes whatsoever. The basic difficulty is that social security taxes are collected from individuals but benefits are calculated on a family basis.

A second important aspect of this change has been the increasing instability of marriages. Although the divorce rate doubled during the 45 years between 1920 and 1965, it redoubled during the 10 years between 1965 and 1975. Even more startling is the estimate that between one-third and one-half of marriages currently being formed will end in divorce. The increasing instability of marriages is particularly important for the social security system because a divorced woman may only claim a benefit based on her ex-husband's earnings record if the marriage lasted for 20 years or more.

Yet in 1976, of all the divorcees granted, less than 8 percent terminated a marriage that had lasted at least 20 years. Thus, the vast majority of divorced women will not be eligible for pensions based upon their ex-husbands' earnings records. Of those women who are divorced, some will be entitled to benefits based upon their own earnings and many will remarry. However, benefits for those women who have been out of the labor force for many years are likely to be low. Furthermore, during the 1965-1975 period when the divorce rate doubled, remarriage rates for women fell. As a result, many divorced women will be totally unprotected by the current social security system. The underlying feature of the social security system that leads to this lack of protection is the vesting of pension rights in the wage earner rather than sharing them between spouses. Thus, in the event of a divorce, the spouse who has remained at home will bear all of the costs (in terms of lost social security pension claims) of the decision that only one be employed, even though the decision was made jointly.

Let us turn now to two types of proposals that would modify the social security system in response to the problems of unequal treatment of one-earner versus two-earner couples and inadequate protection for divorced women. Both types would vest pension rights in individuals rather than base them upon relationships with other people. One type of proposal is "earnings splitting". In essence, it treats marriage as a full partnership: each spouse is credited with half of the total taxable earnings of that couple, regardless of the amounts actually earned. Benefits are then based on each individual's credited earnings record.

If the taxable maximum for couples were twice that for single individuals, couples with the same total income would be treated the same way regardless of the relative earnings of each spouse. However, if the taxable maximum were applied to individuals regardless of the labor force participation of their spouses (as is currently the case) discrepancies would remain. For example, a one-earner couple with income of \$25,000 would pay taxes on \$16,500 and each would have an earnings record of \$8,250 whereas a two-earner couple with incomes of \$10,000 and \$15,000 would pay taxes on the entire \$25,000 and would each have an earnings record of 12,500. Even under the individual maximum version of earnings splitting, though, current differences in treatment between one-earner and two-earner couples with the same total taxable income would be

ended. Further, in the event of divorce, each spouse would have an independent claim to a retirement pension based on the couple's earnings during the years they were married as well as the individual's earnings before and after the divorce. Recent reform of the German social security system has incorporated earnings splitting for all couples whose marriages end in divorce after July 1, 1977. The pension rights accumulated by either during the years of marriage are shared equally. Each can contribute additional taxes to increase their records in past years if they wish.

A second type of proposal involves the assignment of earnings records (or credits) to homemakers. Some approaches restrict credits to those caring for young children. Other approaches provide the credits to all women who spend the predominant part of their time in the home, for example, those who are employed less than quarter-time. The provision of homemaker credits would create individual "earnings" records and would offer some protection to homemakers in the event of divorce.

Those who favor "earnings splitting" argue that it would not only establish individual claims to retirement benefits, but in doing so it would also protect homemakers whose marriages end in divorce. They also point out that although earnings splitting may be more expensive than the current system (due to the progressivity of the benefit formula) it may still be less expensive than many homemaker credit plans. Furthermore, earnings splitting would provide more protection for full-time homemakers whose husbands' earnings exceeded \$10,000 a year (since each would be credited with more than \$5,000 per year) than a homemaker credit plan that provided credits of \$5,000 a year to all homemakers. Yet such a homemaker plan would be one of the most generous and hence most expensive of those proposed.

Those who favor homemaker credits do so largely because of their concern for children. They believe that it is better for children to be cared for by their parents than to grow up in day care centers or in family day care situations. They fear that in many cases the care provided for children whose mothers work is of low quality. In addition, there may be social benefits to be gained from parental care for children. The public school system provides a precedent for social subsidization of "child care" that might logically be extended to preschoolers by providing homemaker credits to the parents who remain at home with them. However, it should be recognized that the provision of homemaker credits without corresponding taxes is likely to be expensive.

Those who oppose homemaker credits without associated taxes argue that while retirement protection should be available to men or women who remain at home with their children, it should be paid for by the couple making that decision. That is, working couples (with or without children) are employed single individuals should not pay additional taxes to subsidize those who choose to remain at home. To support this view one can point out that the goods and services produced by someone who remains at home (as well as any leisure consumed) are not counted as income and hence are not taxed. As a result, one-earner families actually have a higher standard of living than two-earner families with the same total money income.

What would the effects on benefits of specific homemaker credit or earnings splitting options be for different groups of people? To answer this question one needs data covering individuals' entire working lives. I am currently evaluating several alternative proposals for modifying the retirement portion of the social security system, using data that simulates the lifetimes of people chosen randomly from the 1960 Census. The model reproduces, in aggregate, the major events in their lives from 1960 to 1974 and then simulates on an individual basis what will occur in future years. The effects of alternative social security schemes are then calculated for the 6,000 individuals in the sample who were 25 to 27 years old in 1960 and who will reach retirement age by the turn of the century. The purpose of this project is to compare the long-run implications of the alternative proposals in terms of problems that have already been identified as well as any unintended effects that may be built into specific options.

It should be noted from the outset that any change in the social security system would have little effect on pension benefits in the first few years after adoption. For example, pensions for those retiring five years from now would be based on earnings averaged over 24 years, of which at most five would be affected by modifications adopted now. In the case of homemaker credits that were provided only to women caring for young children, any effect would occur even more slowly since most people nearing retirement would not meet the eligibility condition.

Although time does not permit an extensive discussion of the assumptions underlying the analysis, a few should be made explicit. First, the "current system" discussed later refers to one based largely on the Administration's proposal for decoupling, using wage-indexed earnings records for benefit calculations. It does not refer to the system as it is established in present law.

Second, in considering the progressivity implications of the alternative proposals, I have grouped individuals into five equal-sized categories according to their lifetime incomes. However, since full-time homemakers whose husbands have high earnings have high standards of living even though their own earnings may be negligible, it is not appropriate to include them with individuals who are actually poor. Thus, I have considered married women to have the same standard of living as their husbands and have indicated this level by half of the total family earnings. Similarly, I have divided the couple's total social security tax payments and their total social security benefits equally between the spouses. Third, the results presented here are based on an imputed value for the time that homemakers spend at home to reflect their families' higher standards of living compared with two-earner couples with the same money income. This valuation (at the minimum wage) does not affect the qualitative conclusions of the analysis, however. Fourth, the benefits implied by each option have been scaled so that the total expenditure on benefits relative to the total taxes collected under each scheme is the same. This scaling or normalizing has been done because comparison of different social security provisions that collect the same taxes but disperse different amounts of benefits is not particularly helpful since everyone can receive higher benefits if enough money is spent.

Let us turn now to some results of the analysis. Five specific proposals were examined: the "current system"; a homemaker credit provided to women with children less than seven years old, for a maximum of ten years; a homemaker credit provided to women employed less than quarter-time; an earnings-splitting option with each individual employee subject to the taxable maximum; and a combination of earnings splitting and homemaker credits that either shares taxable earnings equally or awards 75 percent of the higher earner's taxable earnings to each spouse, depending on which is higher.

Two outcome measures were used: the ratio of the present value of discounted benefits to the present value of discounted taxes (that is, the relative return of benefits on taxes) and the annual benefit levels. The latter are presented separately for those married during retirement and those living alone.

One set of results evaluates the progressivity (or regressivity) implications of each option. Although the creation of earnings records varies from option to option, the benefit calculation formula used for each proposal is that suggested by the Administration. The progressivity of this formula is sufficient to more than compensate for the regressivity of the social security payroll tax in each case. In fact, the changes in earnings record creation procedures have little effect on the extent of progressivity exhibited by each option. These results, as well as those discussed below, are summarized in the attached table.

The second set of results considers the effects of a particular characteristic, for example labor force participation or marital instability, on individuals within the same income category. As had been expected, the ratio of benefits received relative to taxes paid declines for women as their lifetime participation in the labor force increases. That is, women who work during most of adulthood receive fewer benefits relative to taxes paid than those who have been employed less. Although this effect exists to some extent under all the options analyzed, it is greatest under both the current system and the combination scheme that provides homemaker credits to those in predominately one-earner couples. When homemaker credits are provided each year to those employed less than quarter-time the effect is lessened. It is least pronounced under both the limited homemaker-credit plan and earnings splitting, although the limited homemaker-credit plan provides lower benefit levels.

We should also note that although the ratio of benefits received to taxes paid declines as women participate more in the labor force, the actual level of their benefits tends to increase with labor force participation. For women who are alone in retirement (widowed, divorced, or never married) the highest benefit levels are associated with earnings splitting. The only exception is women in the lowest income category, especially those who have never worked. These women receive higher benefits under the homemaker-credit plans because the amount of the credit (the full-time minimum wage) is large relative to the earnings record that would be established under an earnings splitting option since their

husbands (if any) were also relatively poor. For women who are married during retirement, those in the lowest income classes with the least labor force participation do best under homemaker-credit options. However, as income rises and as the wife's lifetime labor force participation increases, earnings splitting provides relatively higher benefits than do the homemaker-credit options.

One can also examine the effects of marital instability on our alternatives. For women who are divorced when they reach retirement age, earnings splitting and the combination proposal both provide greater protection than do the homemaker-credit options (for women in the top four of the five income categories.) The current system provides approximately the same level of benefits as earnings splitting and the combination proposal for the lowest of these four categories but a lower level of benefits for the three higher categories. Only women in the very lowest income category benefit more from the homemaker-credit options, although they are inferior to the current system. Thus, divorced women with the lowest lifetime incomes benefit (in a relative sense) the most from the current system.

The great majority of divorced women, however, would find their positions improved under earnings splitting or the combination proposal. For those women who have ever divorced, even if they have remained, we find the same results hold, earnings splitting and the combination proposal result in higher benefits than the homemaker-credit options for all income categories except the very lowest.

To summarize then, earnings splitting and the combination proposal are almost always more effective than the homemaker-credit options in terms of resolving the problem of inadequate protection for divorced women. This conclusion is true despite the fact that one of the homemaker-credit options is an especially generous one since it provides credits to a woman in any year she is employed less than quarter-time. However, earnings splitting is far more effective in resolving the problem of equal treatment of one-earner versus two-earner couples than the combination proposal. The only exception to these conclusions relates to the group with the lowest lifetime incomes. For them, a homemaker-credit equal to the full-time minimum wage exceeds the amount they would receive under earnings splitting. Nevertheless, it would not be desirable to choose a homemaker-credit option to benefit the lowest income class at the expense of larger differentials in the treatment of one-earner versus two-earner couples and at the expense of less adequate protection for divorced women in the other four income categories. Supplemental security income programs might well be a superior way of guaranteeing adequate retirement income for those in the poorest group. If the choice, then, is to be based on the effects of the alternative proposals on women in the four other income categories, earnings splitting is the most effective way to solve both problems: the unequal treatment of one-earner versus two-earner couples and the inadequate protection for divorced women.

EQUAL TREATMENT FOR MEN AND WOMEN: EVALUATION OF ALTERNATIVE PROPOSALS (SUMMARY TABLE—EFFECTS OF ALTERNATIVE PROPOSALS)

Proposals	Progressivity	Differentials in treatment of 1-earner versus 2-earner couples	Protection for divorced women
Current system ¹	Yes.....	Large.....	Least.
Homemaker credit (maximum 10 yr).....	Yes.....	Small.....	Some.
Homemaker credit (no maximum years).....	Yes.....	Medium.....	Some.
Earnings splitting (taxable maximum applies to individuals).....	Yes.....	Small.....	Most.
Homemaker credit and earnings splitting combination.....	Yes.....	Large.....	Most.

¹ Based on the administration's proposal for decoupling using wage-indexed earnings records in benefit calculations.

Mr. JACOBS. Thank you, Ms. Gordon.

I regret that other members of the subcommittee are not present for this testimony but I will try to propound some questions myself for the record.

First, I will use a couple of questions suggested by Mr. Kelley, the head staff person here, reminiscent of the Bill Mauldin cartoon where the scientist took his son to the defense plants on Saturday, and

explained, "No, Daddy just invents the bombs, the smart men decide what to do with them."

Mr. Kelley's question is, How would your proposal affect a couple, one of whom worked in covered employment, and the other of whom, for example, was a Federal civil service employee not covered by social security, yet both worked?

Mr. FRASER. I am glad the question was asked. We have not addressed that issue.

Mr. JACOBS. That is perfectly understandable. I suppose what comes to mind is that there are two possibilities, either you could accept that situation or you could treat the earning records of the covered employee in the same way you would if one spouse was not working. One other option would be to have universal coverage of social security.

Mr. FRASER. I actually wish that social security were universal. I know it is moving that way, but there are still important groups that are not covered. Offhand, and this is just off the top of my head, it would seem that where both are working and one is working in non-covered employment, with their own pension plan, that they both would, in effect, just build their own track records.

Mr. JACOBS. I would expect they would.

Congresswoman Keys?

Mrs. KEYS. I would like to add this was an area that was opened up by the *Goldfarb* decision, and it would permit then the female spouse who is working for the Federal Government to be collecting social security, and that is something that will have to be dealt with in one of two ways, I would think, either by way of making it universal or by dealing with it as a double-dipping matter in the way we are dealing with many other things at the present time.

Mr. JACOBS. I think there are members of the subcommittee—I don't know how many, since I am one of them, I would hope we are in a majority—who do believe that universal coverage is a badly needed reform in the social security system and the most notable group consists of the Federal employees.

As I pointed out for the record yesterday, most Federal employees are not exactly laboring under slave wages in this day and age. The analogy can be made between the Federal Government and private industry where there are separate pension plans, some of them quite attractive just as the Federal Government's pension plan is generally quite attractive, and still those individuals are required to participate in the social security system, essentially social insurance, whether they may win or whether they may lose, but nonetheless, participate for the general good insuring against the possibility of deprivation.

Mr. FRASER. Most State governments have had to face this with public employees. Most State governments were not under social security. I think now most are. Teachers, in large part, I think, maybe all of them, have come under social security. So, there has been an integration of a publicly run pension at the State or municipal level and social security, so I don't think incorporating the Federal employees would incorporate any unprecedented problem.

I think firemen and police are the other significant groups.

Ms. GORDON. I was just going to comment that the problem with coverage of Federal employees has nothing to do really with earnings splitting.

What has happened is that for a long time, men who worked in covered employment whose wives worked for the Federal Government received dependent allowances because the wives appeared not to have worked—since their employment by the Federal Government meant they had no or negligible social security records. Now, all that has happened is that the group has been enlarged. Instead of requiring that the man be in covered employment and that the woman be in uncovered employment to benefit from “double dipping,” the Court decision provides that “benefit” to the reverse set—man uncovered and woman covered—as well. The problem is with the non-coverage of Federal employees. I don’t think that has anything at all to do with the question of earnings splitting as a better way of resolving the unequal treatment of women under the social security system.

Mr. JACOBS. Except in terms of this specific proposal.

Ms. GORDON. In terms of specific bills if, in fact, Federal employees are not covered, then one would have to address that issue. The better way to fly would be to address the question of universal coverage.

Mr. JACOBS. Another case Mr. Kelley pointed out, an actual case, as a matter of fact, was a couple that was married for 17 years and the marriage did not work out and there was a divorce. Then the divorce did not work out and there was a remarriage for 13 more years, and then the remarriage did not work out and there was a divorce. What you have there is a total of 30 years of marriage with a result of ineligibility for the woman when, in fact, the divorce occurred after the second 13-year marriage, which is an absurd result.

Where do the children stand under this proposal, say, if one’s spouse should die and there is a minor child? What is the minor child’s entitlement?

Mrs. KEYS. I will respond to that. As I mentioned, there are some problems with the bill that would need to be addressed and this is one of them, because whereas the surviving child with both parents having deceased would receive a benefit equal to present law or greater than present law because they would be receiving benefits from both parents, deceased, the surviving child of one deceased parent would be receiving a smaller benefit, and I think this is one of the areas in which perhaps there would need to be some correction of benefit structure but the beauty of the income-splitting plan, and the independent record plan is that you can pinpoint that area very easily and correct that without revenue loss that is a waste.

Mr. JACOBS. I might note for the record, too—and this may have occurred to the authors, Mrs. Keys and Mr. Fraser—but there is precedent in the present law for the earnings records of the spouse to be attributable to a divorced person.

I am thinking about the question of income averaging for Federal income tax where a person is married and then divorced and perhaps that person has not worked, a woman, and begins work, then the following year the question comes up how does she average her income, how does she take advantage of that provision. It is provided in the Internal Revenue Code that she does take one-half of her husband’s earnings over the appropriate period of time in order to determine

her income averaging. So, it seems to me that your proposal certainly is not without precedent in theory.

Had that occurred to you or can you think of other examples where that is working now?

MR. FRASER. I think just filing a joint return is perhaps the simplest example where in effect, there is a distribution of income to the non-working spouse for the purposes of computing tax liability.

MR. JACOBS. So, we are not really dealing with a terribly radical idea here.

What about the disability for a woman whose earnings are only attributable under your scheme, that is to say, the homemaker who is disabled and her 75 percent or half of the 150 percent is attributable to her for disability compensation, is there a revenue impact? Have you considered that?

MR. FRASER. It clearly would be an economic cost impact. We don't think it would be very large primarily because that tends not to happen often. Women outlive men, generally speaking, but there would be an impact. If we make women entitled to disability clearly there would be an economic impact.

MR. JACOBS. I suppose before the full committee gets down to this proposal, we ought to try to get some figures on that.

MR. FRASER. We have asked the departments for estimates but they have not yet responded. The committee has asked for the estimates.

MR. JACOBS. Someone makes the observation that the department always takes a long time to respond and comes up with \$6 trillion if they don't particularly like your idea, but if they like it, they respond in a few minutes and say \$1.98.

Mrs. KEYS. Mr. Chairman, I would like to add that there is one point that has not been stressed quite enough. That is the fact that this income splitting and independent recordkeeping does for the first time give recognition of the economic contribution of the homemaker. We have not really stressed that and yet that is one of the strongest tenets of this proposal. We have failed to do that completely in our present dependency-related social security laws, and I think that is one of the biggest benefits and one of the things that should be talked about the most with regard to earnings splitting for social security.

MR. JACOBS. As a person who has spent most of his life as a homemaker, I am happy to hear that.

MR. FRASER. Not only the economic benefits, but the importance that the society attaches to the role of homemaker, particularly in the role of raising children. This seems to me a consideration that should be given a value in our social system.

MR. JACOBS. I thank the panel for the contributions.

We will now go vote and resume as soon as we get back.

[Brief recess.]

MR. JACOBS. If there is no objection from the other witnesses, for a variety of reasons, we would like to call the panel that consists of the Illinois Council of the Congress of Organizations of the Physically Handicapped, Margaret Pfrommer, and the Rehabilitation Institute of Chicago, Mr. Hunt Hamill.

PANEL CONSISTING OF MARGARET PFROMMER, GOVERNOR, ILLINOIS COUNCIL OF THE CONGRESS OF ORGANIZATIONS OF PHYSICALLY HANDICAPPED, AND HUNT HAMILL, PRESIDENT, REHABILITATION INSTITUTE OF CHICAGO, ON BEHALF OF THE AMERICAN CONGRESS OF REHABILITATION MEDICINE

MS. PFROMMER. I would like to request that the revision from my oral statment be submitted as the formal statement.

MR. JACOBS. That will be included in the record.

MS. PFROMMER. My name is Margaret Pfrommer. I appear today as governor, Illinois Council of the Congress of Organizations of the Physically Handicapped, and codirector of the Illinois Delegation to the White House Conference on Handicapped Individuals.

I come before you at a time when headlines tell of the crisis in funding for the social security trust funds.

I have seen no headlines that tell of the crisis in the lives of handicapped people who are striving to get back to work.

I come before you at a time when the President, House and Senate leaders, and their economic advisers are exercising their wits and skills to formulate the most equitable solution to the funding crisis.

How much of their time and energy are these same respected leaders dedicating to the formulation of a national strategy to get the rehabilitated handicapped off the disability and welfare rolls and into jobs where they will be paying into the social security trust funds and the General Treasury of this country?

I come before you at a time when headlines cry for welfare reform and an end to the cheating mentality and the moral flatulence of people who cling to the dole and use their wits to avoid work.

I see no headlines about the thousands of handicapped citizens who are fighting to get off the welfare and disability rolls and into full-time employment.

This is the burden of my message to you today. Let me—let us—go back to work.

How can you help us? We are not experts on this complex law known to us all as the Social Security Act. Though our lives are deeply intertwined with the technical phrases, sections and subsections, paragraphs and subparagraphs, many of us cannot probe the intricacies, but each of us can ask, "What does all of this mean for me, and my life, and my future, and sense of fulfillment as a human being?"

Handicapped people are given strong incentive by Federal and State laws and regulations not to return to work. In our preparations for the White House Conference on Handicapped Individuals, our subcommittee on legislative recommendations studied the law and then talked to hundreds of people in Illinois covered by either title II disability payments or title XVI, the supplemental security income program. Again, at the White House Conference, we talked to hundreds more from across the country.

We have identified a number of areas in the present law where changes could be made that would remove disincentives for the return to work of the handicapped.

In addition, we have identified some provisions that work a hardship on all handicapped, both those rehabilitated and ready to go back

to work, and those less fortunate, who, for the present, have no choice but to continue on title II benefits or SSI.

Therefore, we will be making two kinds of recommendations: Those dealing with disincentives to employment in the law and those dealing with specific provisions that work hardships on handicapped individuals, whether related to employment incentives or not.

1. We recommend that the regulations pertaining to substantial gainful activity be changed so that the portion of a person's earnings that are used to defray expenses that flow directly from his handicapping condition be disregarded in determining the amount of his earnings derived from services for any benefit month, including a trial work month. Presently such deductions are permitted only for work-related expenses and are not allowed or modified in light of the nature of the disability or its gravity or complexity.

2. We recommend that the trial work period under title II be extended to a minimum of 18 months and the 3-month grace period remain the same.

The 9-month period results in a seesaw effect of on again, off again, the disability rolls with concomitant expenses of redetermination of disability, waiting period for medicare, et cetera. Eighteen months is a more realistic time within which the handicapped person can determine if he can persist in substantial gainful activity over the long haul, and he gives the social security administrators the same chance to make a fair disposition of the case, without costly duplication of reopening and reprocessing applications.

3. We recommend that the dollar figure used as one of the criteria to determine SGA, which is currently \$230, be raised to \$300 a month. Thus, a person could earn \$300 or less per month and not be deemed, at least on the basis of income, to be engaged in substantial gainful activity. Such an arrangement would allow people of talent, creativity, and skill to contribute on a part-time basis to the enrichment of their cities and communities.

The disabled are an untapped resource in the arts and sciences, in education, in human relations, and in recreation.

Should the regulations of title II deny them this opportunity to contribute, because they earn a few dollars a month above their normal subsistence level provided by the disability insurance benefit? Yes; they may use this money to take the family out to dinner and a show, or buy a week's fishing at the lake, but is it the intent of title II that the life of a disabled worker shall be without comfort or diversion? I think that these first three recommendations of ours are at the very heart of this matter of the rehabilitated handicapped being motivated and having the opportunity to get back to work, to restore themselves—and this goes way beyond money, and SGA, and trial work periods—to restore themselves in their own eyes, and in the eyes of society to the status of giver, not taker; taxpayer, not tax consumer.

4. We recommend the elimination of the 24-month waiting period for medicare eligibility in the social security disability insurance program. This present requirement denies to many disabled workers financial assistance to meet the cost of medical care. These costs are steadily increasing and already far beyond the means of those who must rely on disability payments for their basic subsistence.

5. We recommend that the recent time requirement, section 223(c) (1) (B), be deleted.

Presently under title II all workers disabled at 31 or older—except the blind—need credit for at least 5 years of work out of the 10 years ending when they become disabled.

Thus, a person who began working under the social security system at age 18, and worked steadily until he was 52—that is 34 years—was unemployed or in noncovered employment until onset of a handicap at age 58, would be ineligible for title II disability benefits and medicare coverage. This restriction works special hardship on women. Take a girl who worked under the system from age 17 to 32, got married and had four children, was deserted by her husband, and suffered a spinal cord injury while driving her kids to school and became confined to a wheelchair. Although she had 15 years credit, she would be out of luck as far as disability insurance benefits were concerned. I need not spell out the dimensions of the economic catastrophe, nor will I speculate on the possibility that one or more of her children might have been disabled in the same accident.

What are the facts?

A gutsy young lady has worked all her life, unless there are still those who do not regard keeping a home and four children as full-time, noncovered employment—15 years, 60 quarters under the social security system, and she is told, “Go on welfare, and if you live to 62, we’ll pick you up.”

Not right, when our Government is preaching the doctrine of self-sufficiency and the work ethic. Not just.

6. We recommend the elimination of the 5-month waiting period in the social security disability insurance program.

The economic problems that stem from a disability begin with the disability. The landlord does not forego the rent for 5 months, the grocer does not say, “Pay me when you can,” despite what you may have heard on television and read in books. The children’s feet do not stop growing for 5 months, so there are shoe bills to be paid; dental decay does not take a 5-month respite. In short, the butcher, the baker, and the candlestick maker want payment now. A 5-month waiting period is alien to their way of doing business.

I don’t know whether this should be an amendment or whether it could be a separate resolution, but it does reflect what I have heard from many disabled in this country.

7. We recommend a provision calling upon the President to establish “operation back-to-work” and that the President appoint a task force of representatives from such organizations as the U.S. Chamber of Commerce, the AFL-CIO, the Roundtable of Business Leaders—if they can take time out from defeating the consumer agency bill—the National Association of Manufacturers, the UAW, and representatives of the handicapped and rehabilitation centers, to develop a comprehensive plan for the employment of the handicapped.

That is the end of my statement.

STATEMENT OF HUNT HAMILL

Mr. HAMILL. I am Hunt Hamill, president of the Rehabilitation Institute of Chicago and I speak for the Legislative Committee of the American Congress of Rehabilitation Medicine.

Our purpose is to treat some 300 people a day, 50 percent of them inpatients, 50 percent outpatients who are severely disabled, and to bring them to their maximum level of physical functioning and return them to society hopefully as an asset and not a liability.

We know from our experience that if we bring an individual to his or her maximum level of physical functioning and return them to society without a job, without a career, without a lifestyle which is stimulating and motivating, they won't continue to improve a little physically, as they normally would, they won't remain level, they will regress and deteriorate both emotionally and physically and wind up requiring extensive and expensive rehospitalization and rehabilitative care.

As a result of this, and as rehabilitation progresses, it is relatively new, as you know, more and more attention is being paid to the vocational rehabilitation, work evaluation, and actual job placement of the rehabilitated.

We call it hiring the "able disabled".

At the rehabilitation institute, we have two board committees. We have tremendous involvement of the business community of Chicago, we have a committee called the LIFE Committee, locating ideas for employment, of which Margaret is an active member, which actually develops job opportunities for the handicapped, and we have a placement committee, which specifically calls prospective employers and places people.

The Rotary Club of Chicago is involved and this, hopefully, will be a major Rotary undertaking in the area and possibly nationally in the future.

It is essential that these people have a motivating force and where appropriate a job.

The first three recommendations that Margaret made pertaining to facilitating the individual's return to work, taking away the disincentives that exist. These recommendations if followed will benefit the individual, will benefit society, and will benefit the Government.

They will benefit the individual as the individual has an opportunity to take part in a job, to have seniority, to take advantage of wage increases; in other words, to plan for their own future and security and to take advantage of the group insurance, the pension plan, and the profit-sharing plans if they exist of their employer.

In addition to giving them pride and self-sufficiency, it will benefit society as society's wards are changed into contributing members, and it will benefit the Government.

Take a young man of 21 entering the work force who is in an automobile accident and is severely injured, quadriplegic or paraplegic. The cost of maintenance to the welfare system and disability payments for that boy during a 50-year life span will be from \$300,000 to half a million.

Contrast that with putting him back to work wherein he will be a contributor to the social security trust fund, and will pay over a period of years more than \$100,000 in taxes.

This is why we request that these recommendations be considered by the committee as they will make it possible for the handicapped to return to work.

Margaret is a prime example in that she works as a volunteer now doing a full day's work every day as the receptionist in our Northwestern University Prosthetics and Orthotics Research Department and as a research assistant, Margaret handles five lines through her sip and puff devices, and she comes to work every morning and is a real contributing member of our team.

However, she must work as a volunteer because if she were to accept a salary and have to pay taxes on it, and lose her benefits, she could not afford to work.

Some adjustment has got to be made so that these people with determination, which they have developed over a period of a long rehabilitation process, can put that determination to work for the good of all of us. Thank you.

Mr. JACOBS. I thank you both for your contribution.

You have come highly advertised by Congressman Rostenkowski who asked me to express his regrets that other duties prevented his being here.

He very much wanted to be here to introduce you for the record.

It is pretty good testimony. It does not invoke any specific questions.

You used the word "comprehensive" and I think your testimony has been exactly that and has brought the attention of the committee to matters, part of which have not specifically occurred to me, and I am personally grateful for your testimony.

The full Committee of Ways and Means will do the markup business with respect to social security this time around. We are here to make a record for the benefit of the full committee and your contribution is not only appreciated, but worthwhile.

Sometimes there is a difference. Thank you very much.

Mr. HAMMILL. Thank you very much.

Ms. PFROMMER. Thank you.

Mr. JACOBS. Our next panel will be Eleanor Smeal, president of the National Organization for Women, Marilyn P. Nagy, American Home Economics Association, and Sara Deane, Women's Alliance for Legal Opportunities and Protection.

PANEL CONSISTING OF ELEANOR SMEAL, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN; MARILYN P. NAGY, PH. D., AMERICAN HOME ECONOMICS ASSOCIATION; AND SARA DEANE, WOMEN'S ALLIANCE FOR LEGAL OPPORTUNITIES AND PROTECTION

STATEMENT OF ELEANOR SMEAL

Ms. SMEAL. My name is Eleanor Smeal and I am president of the National Organization for Women. I am appearing before you representing our 60,000 members who are both males and females throughout the country and who are committed to equal treatment of the sexes under the law.

I would also like to state for the record that I have been a homemaker most of my adult life and that I am particularly interested in the subject that would provide homemakers benefits under social security.

I would like to state that for the most part, we concur with the testimony presented to you before by Congresspeople Fraser and Keys and that we would like to support the Fraser-Keys bill. There is no need for me to state our entire testimony, and I will just summarize the highlights but would like to submit the entire testimony of our organization for the record.

Mr. JACOBS. It will be accepted.

Ms. Smeal. The highlights are that we feel the present social security system is by its nature and its philosophy discriminatory on the basis of sex, and that to eliminate this discrimination we must have solutions that deal with the underlying philosophy. We feel that the current suggestions by the administration and the proposals of the administration to get at sex gender bias are only dealing with a technical equality under the law and not getting at the assumptions that are themselves discriminatory.

We feel that the administration's bill which keeps the dependency solution or the dependency syndrome for women, which will be basically for women, although in fact, it has now become equal in language for men and women, is not a good solution. In fact, we think it is probably one of the worst that you could devise.

The administration's solution exacerbates the problem for adult American women and we feel that the Fraser-Keys bill which eliminates dependency as a solution itself is the way to go. We support the income splitting solution.

I think that the testimony that went before me did not emphasize enough the facts that social security in providing a retirement plan actually is dealing primarily with females. The majority of persons over 65, 59 percent of them, are female and almost two-thirds of those over 75 are female. However, the bulk of these people are committed to an old age of poverty. The median income of women in 1974 was \$2,642.

Why are women so poor when they are old? The entire social security system is one that exasperates discrimination at an early age. We feel that we must get at that when we are trying to present solutions that get at sex gender discrimination.

Essentially, the homemaker is in the worst position. There is not only no individual record for her if dependency is kept but also there is no disability insurance. In addition, the widows gap or the provision that you must be at least 60 to collect is another tremendous handicap. We support the figure of reducing the age of the surviving spouse to 50.

For all these reasons, we would like to endorse the Fraser-Keys bill and to deplore the administration's solution.

[The prepared statement follows:]

STATEMENT OF ELEANOR CUTRI Smeal, President, NATIONAL ORGANIZATION FOR WOMEN

EQUITY IN SOCIAL SECURITY—IMPACT ON WOMEN

I want to thank you for the opportunity to appear before you today to discuss sex discrimination within the Social Security system. As President of the National Organization for Women, the largest national organization committed to the eradication of sex discrimination, I am representing over 60,000 women and men in this country who are committed to equal treatment of the sexes under the law.

I would also like to state for the record that for most of my adult life I have been a homemaker by profession, and have felt personally the existing legal bias against homemakers. It is NOW's basic philosophy that marriage is a partnership, and that the spouse who tends to necessary household duties and devotes invaluable time and effort to childrearing is making a valuable contribution to the family and to society at large. The homemaker should be accorded as much respect, importance and economic security as the wage earning spouse.

A primary goal of NOW is the economic equality and independence of women. Approximately 40 percent of the adult female population of the United States are full time homemakers who have no legally recognized share of the household income. Homemakers have difficulty acquiring credit in their own names, and do not have disability insurance, unemployment insurance, or unemployment compensation. Finally, but most important for today's discussion, homemakers do not have independently based social security records. The Social Security System, as it stands today, deliberately treats men differently than women, and is possibly the worst example of institutionalized sexism in our society.

The Social Security Administration has a barrage of rationales to support the equity of the system. "Women workers have not been shortchanged under the Social Security System", they say, because women live longer and therefore receive more benefits. It should be obvious that it costs more to live than to be dead, however. It is curious that the same logic is not applied to race, for by this rationale, since Blacks have a shorter life expectancy, as a group they are certainly shortchanged.

Last year Senator Church's Special Committee on Aging finally set up a Task Force on Social Security and Women, to look for inequities in the system, to study all relevant proposals and to make recommendations. They did a thorough job, but what they came up with were some minor reforms in disability benefits, extension to men of most of the so-called dependent's benefits, and some changes in the language. Why? They were all capable and knowledgeable people with well-informed staff to assist them. They came up with these incomplete recommendations because they did not challenge the basic underlying assumptions of the system—the philosophy—and that is where the sexism lies. One such assumption is that Social Security is, and must therefore remain, an earnings replacement system. Another is the premise that man is the breadwinner and woman the dependent homemaker. A third assumes that the sole financial base is a payroll tax, euphemistically called a contribution.

Congress created the philosophy in the first place and can change it, if it is no longer socially desirable or workable. In fact, Congress has already done so once. In 1939 amendments were added, recognizing that strict earnings replacement was not enough, and added dependency benefits, based on the concept of family earnings. The system now blends individual equity with social adequacy and the payment system has therefore become "weighted" in favor of lower income workers.

Since the purpose of Social Security, interpreted broadly, is to provide a measure of security in old age or disablement, how well does it serve women? Like any program it must be judged by its results. Or in equal opportunity terms, what is the impact of this, our key retirement plan, on the economic welfare of a majority of our citizens? I emphasize majority because women comprise 59 percent of persons over 65 and almost two-thirds of those over 75. So we're talking about most of us. Two out of three poor persons over 65 are women, mostly widows, who after a lifetime of unpaid labor to their families and communities end up their days barely able to exist. A median income of \$2,642 in 1974 means that one-half of all older women living alone had less than \$220 per month. Let anyone who does not think this is a national disgrace try to live on that or less.

Let's analyze why women are so poor when they grow old.

First, Sex discrimination in employment begets sex discrimination in retirement. Exclusion from "man-paying" jobs continues to haunt us into our old age, because in an earnings replacement system, it is upon earnings that the benefit formula is based. Since women typically earn low wages, they also receive low benefits as retirees or disabled workers. So, after a lifetime of hard work at low-paying, often exploitive jobs, a woman retires at 65 to receive the minimum payment. "That's all there is—after I've worked all my life?" she asks.

Should not the Nation's key retirement system set its sights upon making up for past discrimination by reversing the payment schedules. In Equal Pay cases, successful plaintiffs are awarded the differential in back wages. With our greater understanding these days of the extent to which women have been limited to low-paying jobs, the very least that needs to be done is a much heavier weighting in

favor of low income persons in the benefits formula, to help make up for this injustice.

Second, Women are punished by Social Security for motherhood, which compounds the effect of low pay. The benefit formula averages out earnings, eliminating only the five lowest years so that every additional year out for child raising reduces average earnings. Given the child care situation in this country and the presumed responsibility of mothers for young children, this method of computing benefits has decidedly negative impact for mothers. As long as women have more zero years of earning than men, even the full elimination of wage and job discrimination will leave benefits lower for women. But as stated in a SSA bulletin, "The Social Security program lacks any provision to give credit for—or even to disregard—child-rearing years in computing women's benefits." (By contrast military personnel, who are mostly men, received non-contributory "credits" for the years out of the labor market, until they were covered in 1957.) Yet mothers, overwhelmingly female, may not even exclude child-rearing years from income averaging. They get less than nothing—zero years to be averaged in. Why should not all child-rearing years be excluded, or more justly, be credit years?

More fundamental yet, no credit is given for labor in the home. In fact, the largest body of workers still uncovered by what purports to be a universal retirement system are homemakers. According to the California Commission on the Status of Women, a recent study estimates that more than 28 million nonsalaried wives and mothers perform about \$340 billion worth of services each year. If a homemaker drew a paycheck, few men could afford her. Yet her services, extolled to the skies annually on Mother's Day, don't even rate a Social Security card. But she is covered, says the Social Security Administration. That's why dependency benefits were added in 1939. Let's examine that.

The pitfalls of homemaker dependency are legion. In the first place, a homemaker has no coverage for disability. Yet the home is a dangerous place, we are told by insurance companies. If someone has to be hired to replace her services, there is exactly the same impact on family income as though a wage earner lost a salary. And income replacement is the presumed function of disability insurance.

Further, if the concept of having earned one's retirement benefits is important to wage earners, it is equally important to homemakers. There is the question of independence. Curious, isn't it, that independence is so highly regarded for men, but not deemed necessary for women. Earned benefits versus handouts is supposedly the great strength of Social Security. But not for women working in the home.

There are other pitfalls. Since benefits follow the breadwinner, what happens when a homemaker is divorced, which is happening in epidemic proportions these days? We can now receive benefits if we were married 20 years, but if a homemaker is divorced by her husband after 19 years, she loses all rights to Social Security as his dependent, even though her labor at home made possible her husband's labor at work. If marriage as a partnership is recognized at 20 years, it could only be one-twentieth less so after 19 years.

What happens if the homemaker is older than the husband. (It's not that rare, just hidden). She will not be eligible until he reaches 65, if he elects to retire. If he does not, she would have to wait still longer. And it is not just retirement income lost, but also Medicare.

An absurd example of dependency pitfalls was that of a 73-year-old widow, who after 40 years of marriage, lost her benefits because her dead husband had not been properly divorced from his first wife. In 1974, there were 119 widows who lost benefits in this way.

If you can't support yourself, you'll have to take less for life. This is better known as actuarial reduction. If you are entitled to benefits, not as a dependent but as a worker, you may elect to take them at 62 BUT the monthly payment will be reduced by actuarial tables to the equivalent on a lifetime basis of what you would receive if you waited until 65. In 1970, half the women workers and only a third of the men claimed benefits at age 62. Seventy percent of women did not hold out until they were 65.

Though some had other sources of income, the many who did not condemned themselves to an even smaller benefit than they were entitled to.

Why would they do that? For many there was no choice; older women, especially those without a job, have a terrible time finding one. In times like these, the only jobs available to them are really exploitive—physically and emotionally draining jobs of baby-sitting, live-in domestic work, homemaker and chore services for the elderly—all at low pay scales—or part-time work, such as in depart-

ment stores, which take advantage of older women to avoid paying fringe benefits.

Pay twice—collect once. All wage earners pay into Social Security at the same rate, regardless of the family situation. But benefits go to individuals and their dependents. When more than one person works in the family, retirement income may be no greater than if only the presumed breadwinner paid into the system. The employed wife receives no benefit for her payroll tax contribution.

In more than a million cases, the elderly wife who has been employed receives more as her husband's dependent, getting nothing extra for her taxes. In the so-called dual entitlement classification, more than 99.9 percent are female. "I paid all those taxes, but don't get anything for it? I might as well have stayed home!"

Add to all these the widow's gap. When the youngest child reach 18, the widow's benefits cease until she reaches 60, or is totally disabled. Yet the homemaker-widow at 50 faces severe job handicaps because of her age, sex and lack of "recent job experience." She is ineligible for Aid for Families with Dependent Children (AFDC) or medical benefits and in some states, even general assistance. Her plight is exploited by those seeking cheap labor.

The Wiesenfeld case touched on this question. According to that decision, the law was written on the premise that a mother should have a choice of staying at home while there are young children. Once these are grown, it is presumed that savings or grown children will support her. What savings, and how many grown children support their mothers? The decision demands a new look at the realities of modern life. One woman, a widow since 1971, wrote to us, "I was 54 years old this past Christmas Day. My husband earned the family income and I remained home to raise three sons and take care of my husband's parents and my mother. As of right now, I receive survivor's Social Security but next year my son turns 18. How do I eat and what if I get sick?" Anyone who wonders why more people don't care for their aged relatives in their homes should ponder what happens to some of those who do.

These women are part of a new category of disadvantaged persons—the Displaced Homemaker. There are today 2 to 6 million women who have fulfilled a role lauded by society who now find themselves "displaced" in their middle years . . . widowed, divorced or separated. Too old to find jobs and too young for Social Security, they are victims of changing family roles, "liberalized" divorce laws and the fact that when men remarry, they usually choose younger brides. Unlike other workers, displaced homemakers have no cushions to soften their loss of support—no unemployment insurance, no emergency job programs, no union benefits. Their situation harks back to the pre-thirties sink-or-swim conditions. They have faced mandatory retirement from their occupation, but the Social Security system and even the supplementary SSI are not geared to this discarded segment of our population. They fall outside all the social protections from sudden hardships won through collective effort.

Now add up all these points and what do you have? A Social Security system which is highly discriminatory against women—not in an abstract "equal under the law" sense, but in the far more real test of how well it keeps the wolf from the door. In that, it serves us very poorly. In the long run, it condemns a very large number of us to abject poverty. In no time of life is the payoff of women's traditional role more clearly revealed than in old age.

Apologists of the system will continue to argue that Social Security is neither the cause of that retirement income crisis, nor can it provide the cure. Well, if it's not part of the solution, then it is part of the problem. For if Social Security were not there, we would be asking other methods of coping with the crisis. Indeed, the Social Security system is very much part of the cause, because it extends into old age all the sins of the past in regard to women and justifies them at every turn. Benefits calculated on earnings rates, motherhood penalized by averaging earnings, no benefits for homemakers, dependents' benefits tied to the breadwinner, actuarial deductions when you can't support yourself, earnings limitations which then become the excuse for exploitive pay and volunteerism for the elderly, regressive tax rates. For all these reasons and more, I repeat: the social security system as it now stands is one of the worst examples of institutionalized sexism in our society.

So what are we going to do about it?

From the woman's viewpoint, the most promising revision is the Fraser-Keys Bill. The bill is aimed at minimizing derivative benefits—that is, benefits received through the wage record of another. It starts by assuming that work in the home has economic value, and that marriage is a partnership. Since family

income exists due to efforts of both partners, it is presumed that both should be credited with that income on social security records, similar to the rationale behind the joint income tax.

When filing jointly, each spouse would receive credit for earnings and quarters of coverage. Couples would be credited either with half of their combined earnings each or each would be credited with 75 percent of the highest salary (in covered employment). The first alternative would be the most advantageous where the husband and wife earn close to the same amount. The second alternative would apply when there is only one wage earner, or when one receives a significantly higher salary.

Now what does this ingenious proposal accomplish? First, it establishes portability for credits earned as a homemaker, based on recognition of the family as an economic unit. If a woman is divorced, her social security record goes with her into her new life. Second, it would provide disability coverage for both spouses. If they file jointly, both would be accumulating quarters for such coverage. Third, the Fraser-Keys bill lowers the age at which the surviving spouse can collect benefits to age 50, which is the approximate age at which most widowed women with children would lose benefits because their children come of age. The bill treats this benefit as a wage for purposes of developing the homemaker's social security wage record. The homemaker would be collecting benefits while building a wage record on which to retire in her/his own right.

In the words of the authors, the Fraser-Keys proposal is not piecemeal, nor is it completely comprehensive. It addresses the inequities inherent in the law that affects families. Work in the home should contribute toward economic security in old age. This bill moves toward giving this security to women performing such work.

It has limitations of course. It only affects married couples, and just those who elect joint income tax returns. The major objection to this plan by the Senate's Special Committee Task Force on Women was "administrative difficulties". In fact, the problems of dividing earnings between spouses are not insurmountable, and are much less difficult than being left penniless.

The Fraser/Keys bill eliminates the need for the dependency test which is included in H.R. 8218. The Fraser/Keys bill establishes individual social security records which are not linked to a spouse's account. This system will give each partner his or her own social security record which will stay with him or her throughout life. Individuals may marry, be widowed, divorce or remarry without losing benefits. No individual would be forced to prove his or her right to benefits. The extent to which an individual qualified for social security would be clearly stated in his or her records.

The social security system as it now stands is one of the worst examples of institutionalized sexism in our society. On behalf of the National Organization for Women, I urge this committee to take steps immediately to change the assumptions written into the law in 1935 to meet present day reality. It is time that women, especially homemakers, were recognized for their economic value.

Mr. JACOBS. Thank you, Ms. Smeal.

Dr. NAGY. Mr. Chairman and members of the committee, I am Marilyn Nagy and I am speaking for the American Home Economics Association, a national organization of 55,000 men and women who work as home economists in a variety of settings.

Mr. JACOBS. I must go vote. I will be back as quickly as possible.

[Brief recess.]

Mr. JACOBS. I apologize for the delay caused by Congress to a congressional hearing.

STATEMENT OF MARILYN P. NAGY, PH. D.

Dr. NAGY. I was just saying I am Marilyn Nagy, speaking for the American Home Economics Association, a national organization of more than 55,000 men and women who work as home economists in a variety of settings: as teachers in elementary and secondary schools, colleges, and universities, and in adult education programs; in cooperative extension at State and county levels; in institutional administra-

tion as managers and dieticians; in community service in health, welfare, rehabilitation, child care, and consumer agencies; in business, as specialists in marketing, consumer communications, and product development testing; and as college students preparing to become home economists.

Home economists are specialists in family economics, home management, nutrition, textiles, housing, child development, family studies. The central concern which integrates all of these specializations into a field of study is the family. For this reason, the American Home Economic Association is concerned about inequities in the current social security system, and the negative impact of these inequities on families—young families, aging families, two-income families, low-income families, families with a full-time homemaker, particularly those who are divorced before 20 years of marriage.

My comments are redundant to some of those made by people before me, so I will enter my full statement and skip through and highlight certain areas of concern.

One of the central elements in society is the family. It is still the provider for most of the basic physical and emotional supports of its members. Social security is still assuming that the family is as it was back in the 1930's with the dependent wife who stayed home and one wage earner. Today, we have a very, very different situation, and I think it is imperative that the Fraser-Keys bill and corrective amendments be implemented so we don't perpetuate the myth of a family structure that no longer exists.

Skipping through my comments, one of the key recommendations of our organization, that would correct many of the inequities in the present social security system, is to take all reference to marital status and sex out of the system, making benefits accruable to all throughout their life careers, including their years spent as full-time homemakers.

Thus, when retirement or disability occurs, each individual, including all homemakers, would have their own record to draw from rather than gaining entitlements through another to whom they happen to be currently married. Entitlement, then, through another would come only in the case of aged dependent parents or dependent young children.

Another basic recommendation, skipping through my testimony since you have it, is that the benefits should be accrued to the full-time homemaker for each year she is married regardless of the length or continuity of the marriage. If she is married to two men in her lifetime, she would have credits on her account for each of those respective marriages, along with contributions for those years she was in the work force outside the home.

A second recommendation in this area is to provide coverage for women during the years they are homemakers so in the event of disability, there is coverage and should death occur, the children would be eligible for dependent benefits.

The mechanics of providing such eligibility will not be easy to work out but it can be done as other countries have proven. Belgium and now Germany provide for the splitting of social security credits when there is a divorce. It could be done, as was pointed out earlier, as we go along with the income-splitting concept.

I have in my presentation four alternative ways that coverage might be given to women for those years that they are raising children. I am not going to go through the four alternatives, but I would like to discuss one, and this is the third alternative in the report. It is to tax the income of married couples filing a joint return the same as is done for Federal tax purposes where the assumption is that each has earned half of the income. Social security taxes would be paid on both halves of the income up to twice the maximum social security wage base for a given year. This would result in higher taxes for the more affluent and eliminate some of the regressiveness of the present taxing system. In effect, the credits would be split each year between the husband's and wife's accounts. Under this proposed system, a couple making \$33,000 in 1977 would have to pay social security taxes on \$33,000, whether there was one or two earners. A couple making \$20,000 would pay social security taxes on \$20,000, whether there was one or two earners. In the event of divorce or remarriage, each would carry their own credits.

There are several other methods that I have down, but that is the one that takes care of some of the inequities in terms of the one-income and two-income families and provides some help to the system itself. It relieves the burden on the family with two wage earners where they have two incomes and they each pay on up to \$16,500, whereas a one-income family earning the same amount does not pay tax on that full amount.

My second major concern is that we need to consider the impact of social security on young families who are trying to raise their own children while supporting their elders on social security. Today's young families, trying to raise children, are having a difficult time as they cope with the highest food, shelter, transportation, and utility costs in our history, along with a myriad of local and State income taxes, property taxes and sales taxes, many unheard of in the 1930's, when the social security system began.

We must be careful that the changes in the social security system be such that they don't excessively burden the young family struggling to raise its own children. These families burdened with the high cost of living and taxes are finding it difficult to meet living costs and almost impossible to set aside savings for their own retirement.

The net effect of having Federal, State, and local income taxes on their social security tax has the effect of raising the impact of the social security tax even higher.

Therefore, the next recommendation is that there be a fundamental change in the way social security is financed to lessen the impact on low- and middle-income wage earners and two-income families, perhaps through a more progressive system such as was outlined yesterday.

I have some examples here of how people that pay more can end up getting less back under the present system.

In efforts to lessen the impact on people, there are several suggestions. I will just read the suggestions without the discussion.

One is to require all taxpayers to contribute to social security allowing no one to opt out. The second one would be to support social security benefits, which are welfare in concept, from the general tax funds.

Let's not kid ourselves, social security is an insurance system but it also is a welfare system.

Some of the speakers yesterday alluded to the fact that it was strictly an equity system. Yet, anybody who has studied it, you realize very quickly there are very strong social welfare and insurance motives behind it.

Supplemental security income should be continued to be supported by general tax revenues and should, in addition, cover some disability payments for workers who have contributed, say perhaps less than 20 years.

Another recommendation is to pass legislation allowing social security taxes to be deducted from gross income, to determine gross adjusted income, and prohibit States from taxing as income money that has been contributed to social security. Social security benefits would ultimately, then, become taxable to the person who received them in the year they received them when they are usually in a lower tax bracket or pay no taxes at all. This will greatly relieve the tax burden on the young and middle-income family and would provide greater equity in the system as benefits are often received by individuals who did not contribute to them and others received benefits far in excess of their contributions. This would be consistent with other tax regulations that allow contributions to qualified pension funds to be exempt in the year earned and taxable in the year received.

The next recommendation is that benefits be raised to those who are truly needy. This should not be done in such a way that it benefits those who contributed little to social security because they worked for an exempt employer. It needs to benefit the aged person who has a very low benefit coming in. Perhaps the way to do this is to raise the level of SSI income to \$3,600 for a single person or \$4,160 for a couple and adjust this periodically to coincide with the Bureau of Labor Statistics' figures for low-income urban-retired families and individuals. There are the poverty levels they have currently determined. Another recommendation is to provide a higher replacement ratio for those people who have worked so they would get a higher benefit.

One of the purposes of social security is to redistribute income. The first recommendation just made, about using the general tax revenues for SSI, is consistent with the income redistribution purpose. The second recommendation, of raising the percentage return people would be receiving, is consistent with the return-of-equity concept.

In conclusion, I just want to make one or two general comments. This sounds like we are taking away some social security benefits when really, we are suggesting an alternative. An assumption of the current social security system is that women must look after children. It is an outdated sexist idea that ignores the multiple roles of both men and women and underestimates men's and women's abilities to care for children.

A retired man can care for children under the age of 18, freeing the system of the need to pay benefits to his wife until she, too, is of retirement age. Under current law, a wife is presumed dependent upon her husband, at least until the Goldfarb decision. It is assumed that a widow is to stay home with her children until her last child is 18, yet the court will expect a divorcee with young children to go out to work immediately and support herself. When evaluating revisions, the as-

sumption that a widow with teenage children needs benefits for herself should be questioned—the widow is more in need of displaced homemaker benefits that would provide for retraining for entry into the job market. This would free up social security funds to be used for other benefits. There is no such thing as a free lunch. We all realize that we cannot keep expanding benefits without in some way modifying other areas.

We need massive public education on social security, because many people do not understand the system. Pamphlets that are distributed at the Social Security Office are helpful but more mass-media-type education is called for.

The last area that I am going to deal with is to recommend that a concerted efforts be made to reach low-income women who work as babysitters and domestics. Many of these women will refuse employment if the employer will report earnings for social security, without realizing that they are the real losers in the long run. It is most difficult to employ help for babysitting or domestic work if the employer insists on paying social security taxes on the work, even if the employer is willing to pay both the employee and employer contributions. In some cases, domestic workers refuse to work, if social security taxes are paid, because they know they will receive more from their spouse's accounts or they will lose ADC or general assistance benefits or will have to pay income tax. In other cases, the refusal comes from lack of knowledge about the system and about what quarters can mean to their retirement.

My last recommendation is to request an economic statement when you evaluate your proposals. The American Home Economics Association would very much like to see an economic impact statement completed that would reflect the impact of the legislation on the single-parent family, the woman who is divorced with less than 20 years of marriage, the two-income family, the young low- and middle-income family, and the retireds who have no private pensions and few resources other than social security. If this analysis is done before the bills are passed, we may avoid some very negative amendments.

Amendments that are band-aids in nature will not solve the current dilemma of the social security system. Fundamental decisions must be made to restore confidence and economic solvency to the system. These changes must remove sex and marital status discrimination, correct taxing and benefit inequities, and take cognizance of the changing family roles and structures.

I would be remiss if I did not add that the regulations that President Carter has proposed about using the last 3 years' earnings as a dependency test would do irreparable harm for many people for the reasons that have been pointed out earlier. We would like to go on record opposing the proposal that would use the 3 years prior to eligibility for the average.

[The prepared statement follows:]

STATEMENT OF MARILYN POGUE NAGY OF THE AMERICAN HOME ECONOMICS
ASSOCIATION

Mr. Chairman and members of the subcommittee, I am Marilyn P. Nagy speaking for the American Home Economics Association, a national organiza-

tion of more than 55,000 men and women who work as home economists in a variety of settings:

- As teachers in elementary and secondary schools, colleges and universities, and in adult education programs;

- In cooperative extension at State and county levels;

- In institutional administration as managers and dieticians;

- In community service in health, welfare, rehabilitation, child care, and consumer agencies;

- In business, as specialists in marketing, consumer communications, and product development testing; and

- As college students preparing to become home economists.

Home economists are specialists in family economics, home management, nutrition, textiles, housing, child development, family studies. The central concern which integrates all of these specializations into a field of study is the family. For this reason, the American Home Economics Association is concerned about inequities in the current Social Security system, and the negative impact of these inequities on families—young families, aging families, low income families, families with a full-time homemaker.

Social security was passed in 1935 to provide an income floor in the retirement years at an initial contribution rate of \$36 per year from a family with one wage earner. Benefits were based on a traditional family where a man supported his non-employed wife. In 1977, the situation is quite different. A middle income family contributes \$927 per year and if there are two wage earners, as in 48% of the families in the U.S., the contribution can go up to double that figure.

A study of the social security system as it is operating today clearly indicates fundamental changes are necessary if it is to continue as a viable system that has public confidence. The family system has changed and social security has not adapted itself, in spite of many amendments, to the changes in family structure and functioning. Amendments have frequently increased the contribution rate and amount of wages covered, with little consideration being given to the impact of these changes on the families that are in the work stages of the family life cycle. The family has been and still is the central system in our society for the nurturing of children and meeting the emotional and physical needs of adults. The family has changed, but many of the traditional family functions continue to be met through the family. Unfortunately, the social security system as it currently operates has not taken cognizance of the many changes in society that directly affect the family. A review of the literature reveals when amendments have been passed the only considerations have been economic to the system itself, rather than based on an evaluation of the impact and justice to the members of society that support the system or rely on it for income.

To make changes in the social security system, that are necessary to retain its creditability and solvency, without giving careful thought to the impact on the various family forms and work careers is to ignore the reciprocal relationship between the family and the economic system, which includes social security. Our federal income tax laws currently encourage working couples to live together without benefit of marriage. The present social security system benefits those couples who fit the rapidly declining traditional family of working father and full-time homemaker, who stay married for a lifetime. The two-income family, the low-income family and the divorced woman are all discriminated against under present regulations.

This paper does not attempt to make value judgments on various family forms, rather it is to point out the importance of considering the impact of proposed changes before the recommendations are made into law. The easiest way to correct many of the inequities in the present social security system is to take all reference to marital status and sex out of the system, making benefits accruable to all throughout their life careers (including years spent as full-time homemakers). Thus, when retirement or disability occurs, each individual, including all homemakers, will have their own record to draw from, rather than gaining entitlement through another to whom they happen to be currently married. (Entitlement through another would come only in the case of dependent aged parents or dependent young children.)

The following parts of this statement include suggestions for actual revisions of the social security system as well as identifying areas that need further analysis.

One of the most serious inequities in the social security system lies with its treatment of women who have devoted many of their potential work years to the raising of children. If a woman stays married she can collect half of her husband's benefit. If she is married to a low-income earner she receives a much lower benefit for doing the same work as her "sister" married to a higher income earner. If she is divorced with less than 20 years of marriage, she has no benefit entitlement for her years spent maintaining a household and raising children. The "new spouse" of the former husband receives the benefit, if otherwise entitled by age. Serious consideration needs to be given to a modification of the system to:

1. Provide accrued credits to the full-time homemaker for each year she is married, regardless of the length or continuity of marriage. If married to two men she would have credits on her account for each year of those marriages, along with contributions for those years she was in the work force outside the home.

2. Provide coverage for women during the years they are homemakers so that in the event of disability there is coverage and should death occur the children would be eligible for dependent benefits.

The mechanics of providing such eligibility would not be easy to work out, but it can be done as other countries have proven. Belgium, for example, provides for the splitting of social security credits when there is a divorce so that all benefits accrued during the marriage are split between the couple. Other countries, such as Britain, provide a plan whereby a homemaker can choose coverage via a voluntary contribution. The economic impact on the social security system of these modifications must be computed and adequate taxes collected in an equitable manner. The difficulty of developing such a system should not preclude the sub-committee from demanding that revisions include provision for correcting the present system which is anachronistic with today's trend to a higher divorce rate and more serial marriages.

The mothering role, particularly in the first five years of life, is extremely important as it is an investment in human capital. Under our present value structure this important role is given no economic value. If a man is left a widower it will cost him \$5,000 or more annually to hire a housekeeper if he has very young children who need full-time mothering. Providing social security coverage to full-time homemakers who have young children in their care would demonstrate to the world that as a country we value the development of children and are willing to give it an economic value. Social security coverage for these women would help them build up credits in their own account and provide them with disability coverage. In addition, their spouses would become eligible for benefits in the event of their death, if otherwise eligible. Paying for such coverage could be done in one of several ways. The following ideas are presented as suggestions. Statistical analysts would have to cost out the various alternatives to determine the tax rate and wage base that would be necessary to fund them.

Alternative A: Develop a two-tier system of payment percentage so that married men with dependent spouses pay a different tax rate than single persons and married people without dependent spouses. The increased contributions for these men would be offset by making social security taxes deductible from gross income, as indicated elsewhere in this paper.

Alternative B: A second alternative would be to have married men with dependent spouses contribute on a higher base of wages, perhaps $1\frac{1}{2}$ times the amount of income that is taxable for a single person or married person with a working spouse. (Note that under the current system where both spouses work outside the home, both are contributing to the system yet their combined benefits may not be higher than the couple where only one higher income spouse is presently contributing. This is particularly true of low and middle income working couples.)

Alternative C: A third alternative is to tax the income of married couples filing a joint return, the same as is done for federal tax purposes, where the assumption is that each has earned half the income. Social security taxes would be paid on both halves of the income, up to twice the maximum for a given year. This would result in higher taxes for the more affluent and eliminate some of the regressiveness of the present system, which takes a higher proportion of the low-income families' income than higher income families.

In effect, the credits would be split each year between the husband and wife's account. Under this proposed system a couple making over \$33,000 in 1977 would have to pay social security taxes on \$33,000 whether one or both spouses were working. A couple making \$20,000, whether one or both spouses were working outside the home, would pay social security taxes on \$20,000. A couple making \$8,000 per would pay taxes on \$8,000 per year. In all cases credits would be split equally between the spouses for any year in which they were legally married and filed a joint return. In the event of divorce and remarriage each would carry with them the credits earned from the years spent together. Their children would be eligible for benefits on either account in the case of death of one of the parents.

Alternative D: A fourth alternative would be to assume a full-time homemaker with young children in her care is being paid a minimum wage and calculate an annual salary. Social security taxes would be based on this base wage, which would go up as the minimum wage goes up. While some homemakers would argue they are worth far more, it is most difficult to put an economic value on all household activities. When attempts have been made to monetize household activities, the many intervening variables make it difficult to reach an average. Using minimum wage for a full-time equivalent employee is one possible solution. As the minimum wage goes up, the wages recorded on the "mothering" full-time homemaker's account could go up accordingly. Remaining is the problem of credits, if any, for the full-time homemaker who stays home, but has no young children in her care. A definition of young children would have to be determined, such as up to the teen years, if this type of system were adopted. More research is needed on the value of the mothering role, particularly. Hours on routine chores such as cleaning, fixing meals, and laundry have been researched and going wage rates have been calculated to determine the economic value of these activities. In the cases where the woman works outside the home in addition to homemaking duties and mothering, the husband would have to contribute only to the extent the wife was not earning wages equal to the taxable wage base for social security in effect for that year.

These four suggestions have been included to show that there are ways to provide coverage for homemakers. The Consultant Panel on Social Security to the Congressional Research Service chose not to explore this important issue, which is most unfortunate.

IMPACT OF SOCIAL SECURITY ON YOUNG AND MODERATE INCOME FAMILIES

Another area that needs to be considered when making system revisions is the effect of the increasing rate of social security taxation on young families who are trying to raise their own children while supporting through social security taxes their elders. Today's young families trying to raise children are having a difficult time as they cope with the highest food, shelter, transportation and utility costs in our history along with a myriad of local and state income taxes, property taxes and sales taxes—many unheard of in the 1930's when social security began.

The increased divorce rate may well be attributed to dissension over allocation of limited financial resources. Changes in the social security system must be such that they do not excessively burden the young family struggling to raise its own children. These families burdened with the high cost of living and taxes are finding it difficult to meet living costs and almost impossible to set aside savings for their own retirement. The net effect of having federal, state and local income taxes on their social security taxes is to raise even higher the impact of the social security tax.

There needs to be a fundamental change in the way social security is financed to lessen the impact on low and middle income wage earners and two-income families. These three categories of earners pay a disproportionately higher percentage of their income in social security taxes, yet do not receive benefits in proportion to their contributions. The system is weighted to replace a higher percentage to low-income earners, but many low-income and middle-income families have two wage earners and thus pay a combined tax much higher than a more affluent single earner family. The spouse who married a higher income wage earner often receives more in benefits than a woman who worked outside the home along with raising a family, but who was married to a lower income wage earner.

We respectfully request that the Social Security Sub-committee give consideration to these recommendations regarding funding, which will help correct the inequities mentioned above and elsewhere in this report.

1. Require all taxpayers to contribute to social security. If the system is to continue to have welfare components as it does now, then fairness dictates that all taxpayers should share in paying for it. If the system becomes strictly a matter of return of equity, then and only then, is there justification for allowing specific groups to choose not to participate. Government employees should be required to contribute in addition to their own retirement plan. Many citizens contribute to private retirement plans, just as government employees do, yet they are not given the opportunity to not contribute to the social security system. The current system allows "windfall" benefits to couples where one spouse worked for the government and one worked in employment covered by social security.

2. Support social security benefits which are welfare in concept from the general tax fund. The social security payroll tax should have to cover only the equity return portion of social security. Supplemental security income should continue to be supported by general tax revenues and should, in addition, cover some disability payments for workers who have contributed for less than twenty years.

3. Pass legislation allowing social security taxes to be deducted from gross income to determine gross adjusted income and prohibit states from taxing as income money contributed to social security. Social security benefits would ultimately become taxable to the person who received them in the year received when they are usually in a lower tax bracket. This would greatly relieve the tax burden on young low and middle income families and would provide greater equity to the system in that social security benefits are often received by individuals who did not contribute toward them. Some who contribute receive no benefits and some receive benefits way in excess of their contributions. This would also be consistent with other tax regulations that allow contributions to qualified pension funds to be exempt in the year earned and taxable in the year received. This would be easy to phase in as taxes could be handled in the same way private pensions are currently handled. (That portion of a pension which is a return of one's own money is not taxed; however, when an individual receives all his own contributions the pension then becomes taxable.)

Benefits need to be raised for those who are truly needy. This should not be done in such a way that it benefits those who contributed little to social security because they worked for an exempt employer, such as a government body. To avoid windfall benefits to those not truly needy, the following recommendations are made:

1. Raise the level of supplemental security income to \$3,600 for a single person (\$4,160 for a couple) and adjust this level periodically to coincide with the Bureau of Labor Statistics figures for low-income urban retired families and individuals. Since S.S.I. and social security are both administered by the same agency, although funded separately, this would help those who are truly needy and living their final years in poverty.

2. Provide a 60 percent replacement ratio on the first \$6,000 of average covered earnings (P.I.A.), with a declining rate thereafter. This will lower benefits for those who have few years of covered employment, but raise them for many low and middle income workers who have contributed for many years. The truly needy would have lost benefits compensated by S.S.I., while those on other pension plans would lose social security benefits, but not be eligible for S.S.I.

One of the purposes of social security is to redistribute income. In the first recommendation above, general tax revenues would be used to assist in this income re-distribution. The second recommendation would be consistent with the return of equity concept on which social security was originally based and which is important to many senior citizens who do not like the concept of "welfare."

FURTHER RECOMMENDATIONS FOR CHANGES IN THE SOCIAL SECURITY SYSTEM

An assumption of the current social security system is that women must look after the children, which is an outdated sexist idea that ignores that multiple roles of both men and women and underestimates men's ability to raise children. A retired man can care for children under the age of 18, freeing the system of the need to pay benefits to his wife until she, too, is of retirement age. Under current law a wife is presumed dependent upon her husband but a man must prove dependency upon his wife, at least until the recent Goldfarb decision. It is assumed that a widow is to stay home with her children under age 18, yet courts expect a divorcee with young children to go to work and support herself. When evaluating revisions, the assumption that a widow with teen-age children needs benefits should be questioned. This widowed mother of teen-age children is more in need

of displaced homemaker benefits that would provide re-training for entry into the job market. This would also free social security funds that could be better used to raise benefit levels of those who have worked and contributed to social security but are only eligible for minimum benefits because of low wages, for those homemakers who are disabled but not eligible for benefits, and for those husbands who have lost their wives and have younger pre-teen children to raise. Social security cannot keep expanding benefit levels without either raising taxes excessively or reducing some benefits. Since the family has changed there are several places where benefit eligibility needs to be questioned as it is based on anachronistic assumptions about parenting and dependency.

Disability benefits need to be re-structured so the younger worker does not receive such a high benefit compared to the older worker who is disabled. The older worker contributed more over a period of years, yet under current regulation receives much less in benefits. The situation should be reversed, which would require a new procedure for calculating benefits once eligibility is established.

NEED FOR EDUCATION AND RESEARCH

As an educator in the area of family finance and consumer issues, I am acutely aware of the over-all lack of understanding of the social security system. I, therefore, make the following recommendations.

1. A massive public service education program should be developed that would include information about eligibility, payment computation and the need to provide other savings for the retirement years to supplement social security. Mass media would be recommended to supplement the present system of pamphlets picked up at local social security offices.

2. A concerted effort should be made to reach low-income women who work as babysitters and domestics. Many of these women will refuse employment if the employer will report earnings for social security, without realizing they are the real losers in the long run. It is most difficult to employ help for babysitting or domestic work if the employer insists on paying social security taxes on the work, even if the employer offers to pay both the employee and employer contributions. In some cases domestic workers refuse to work, if social security taxes are paid, because they know that they will receive more from their spouses account or they will lose A.D.C. or general assistance benefits if the earnings are reported. In other cases the refusal comes from lack of information about the system and what quarters of coverage can mean in their retirement. Because of this phenomenon, the woman who works outside the home and needs household help is often put in the position of having no one willing to work for her if she chooses to abide by the law and pay social security taxes on her workers. In the long run many of the low-income women lose by having fewer quarters of coverage and lower average earnings.

3. Employers should be encouraged to educate their employees on the provisions and regulations of the social security system. An informed electorate can better provide input to its legislators.

The American Home Economics Association sincerely appreciates this opportunity to present these views on social security revisions to the Subcommittee on Social Security. In conclusion, we would like to request that a family impact statement be prepared for each revision in the social security system before it is passed and becomes law. The impact statement should include an analysis of the effect on:

1. The single parent family.
2. The woman who is divorced with less than 20 years of marriage after spending years raising children.
3. The two-income family.
4. The young low and middle-income family.
5. The retired who have no private pensions and few resources other than social security.

Amendments that are band-aid in nature will not solve the current dilemma of the social security system. Fundamental changes must be made to restore confidence and economic solvency to the system. These changes must, however, remove sex and marital status discrimination, correct taxing and benefit inequities and take cognizance of the changing family roles and structure.

Thank you, Mr. Chairman.

Mr. JACOBS. Thank you.

Mrs. Deane?

STATEMENT OF SARA DEANE

Ms. DEANE. I would like my statement to go into the record with the correction that it was 2 years ago that I first testified, and that was the time that the displaced homemaker bill had just been introduced defining the problems of that group of women.

I heard the testimony, the statistic offered by Ms. Gordon that 8 percent of divorces are taking place in marriages of 20-plus years. I have been using the one that 25 percent of divorces are taking place in marriages of 15 years' duration. If that is correct, there are a great many women who qualify for this displaced homemaker group which is suffering the inequities of the social security system as it is presently constituted in several ways, one, that if they are divorced, they have no ability to trigger the social security benefits for themselves until their husband does so. These inequities I need not list because others have done so. I need only underscore that the Fraser-Keys bill—and I think it is significant that Congressman Fraser's wife was responsible for the drafting of the bill and that Congresswoman Keys is the cosponsor of it—is the best means of changing the breadwinner-dependent concept that created social security in 1935, to a desexed system that would permit a woman to have an independent social security account, portable through multiple marriages, governing her independent social security at retirement age, however many times she moves into and out of the job market.

Others, have said it, and I want to put on the record for the Women's Alliance for Legal Opportunities and Protection—a coalition for income security—a definite opposition to the 3-year dependency test proposed by the administration. That is only a band-aid which would not solve the problems of the social security system. Having heard the testimony offered here, I believe that the income-splitting concept has sufficient support that it surely will ultimately prevail—if not in this session of Congress. I would like to underscore what my written testimony has suggested, that great care must be taken so that in embracing this concept, which is certainly welcome in every respect, we do not discard the concern for the woman who will not have time enough to earn her independent social security account. If her marriage has continued for 15 years or so, in raising children and remaining at home she must have the provision of reducing the 20-year marriage requirement and of making other adjustments that will be necessary to take care of that woman in the transition period that Congressman Fraser has said his bill would provide.

Also, I want to underscore the comments of Ms. Smeal, the president of NOW, that the social security system presently, even if these fundamental changes are made, will be primarily concerned with women, for the very simple reason that women's longevity is on the average about 8 years greater than men.

They are going to benefit more under the social security system, and increasingly, of course, they are going to be paying in more. But with the fact that about 70 percent of older women now live below the poverty line, we want most of all to prevent the slide into that kind of

poverty of the women who still are below the age of retirement but without time enough to earn their own independent security.

[The prepared statement follows:]

STATEMENT OF SARA DEANE, WOMEN'S ALLIANCE ON LEGAL OPPORTUNITIES AND PROTECTION

Just one year ago, I testified for the first time before a Congressional Hearing—it was the Subcommittee on Retirement and Employment of the House Select Committee on Aging and the subject was "Economic Problems of Older Women."

The Displaced Homemaker Bill had just been introduced, defining the problems of the group of women suffering the traumatic loss of spouse after long marriages due to widowhood or divorce, with consequent loss of home-supporting income, facing agist/sexist discrimination and finding their homemaking skills had no value on the job market, condemned to slide into the poverty in which the majority of older people live in this country—and the majority of the elderly are single women, living alone.

The legislation designed to "desex" the Social Security system, now before this Congress as H.R. 3247, was then being drafted by Arvonne Fraser, wife of Congressman Donald Fraser and former President of the Women's Equity Action League which has offered supportive testimony to this Committee. The Women's Alliance on Legal Opportunities and Protection supports independent accounts providing portable Social Security coverage, and H.R. 3247 was one of the women's legislative issues endorsed by the D.C. IWY Conference last month for the D.C. Delegation to put before the national IWY Conference in Houston in November.

In my previous testimony, I asked for support of Bills then before the 94th Congress to reduce the 20-year marriage requirement for former spouses to share Social Security benefits of covered workers. H.R. 3247 eliminates the necessity of the 1965 provisions covering former spouses, but only will affect those spouses young enough to earn individual Social Security accounts. To prevent inequities of non-coverage while phasing into independent accounts, a revision of the 1965 Amendment to benefit dependents lacking skills enough or time or ability because of health impairment should include reduction of the 20-year limit.

The suggestion in that testimony for legislation providing similar benefits to former spouses under the annuities of federal employees not usually covered by Social Security, because the partnering of military, Foreign Service or Civil Service careers usually denies a substantial earnings record to the spouse. Now such legislation is ready for mark-up and while it may be passed, a further liberalization is needed for equity with the Social Security system: to include federal employees in Social Security and their annuities as additional retirement benefits in the manner of the Railroad Retirement Act.

Efforts to legislate on a non-sexist basis in anticipation of the Equal Rights Amendment are projecting possible inequities. For example, in compliance with the Supreme Court ruling against the masculine dependency test to claim spousal support, the Administration proposes a dependency test for all persons, making eligible the spouse earning the least income in the three years prior to eligibility. This is a threat of denial of Social Security benefits to a woman who has not worked except in the three test years, or receiving only minimal benefits if in the test years her earnings were greater than those of her spouse.

Mr. JACOBS. Thank you very much.

Mrs. Smeal, speaking of economic impacts, do you have a revenue impact idea about the reduction in age from 60 to 50 for surviving spouses benefits?

Ms. SMEAL. I don't have the exact figure, but everything we have seen is that it is not a tremendous cost, but that it would save in human suffering a great deal. In the Fraser-Keys bill, most people feel it would be a transition period.

We won't know for sure, and, of course, there is age discrimination in employment. But the feeling is that if this is coupled with a displaced homemaker's bill that would provide retraining, and incidentally, the displaced homemaker's bill is before Congress, that many

women will be able to seek employment, and, of course, it would be preferable for them then if they had jobs during this period.

So, I feel that this coupled with the disabled homemaker's bill would not be a tremendous burden.

MR. JACOBS. That is on the expense. Now, what about on the theory side?

We have had a great deal of testimony recently on the subject of removing earned income limitations with respect to social security benefits.

The testimony has included assertions that realistically the retirement age of 65 should be moved to 70, 68, or something beyond that in terms of the usefulness of people in the work force beyond those—I guess you would call it the greening of retirement age.

Sixty-five isn't all that old any more. Does that argument tend to fight the thought of moving the private spouse age from 60 down to 50?

MS. SMEAL. No. That is what I was saying about the fact of displaced homemakers and retraining. You see, the problem is twofold. The people in the transition area cannot be ignored.

In fact, what is happening to women who are widowed at the age of 50 is that they are beginning to be exploited, and that is my testimony, in the economic markets.

One way, for example, is in the retail industry where they are not only working at minimum wages but frequently not given the full 40 hours so that they are denied fringe benefits.

Many people ask why do they take such jobs—well, it is better than nothing.

The other thing that affects homemakers is that currently there is given no credit to them for their years in employment in the home, so they are supposedly—the myth continues that they are not working.

MR. JACOBS. I am asking the question in the context of the Fraser-Keys bill.

MS. SMEAL. That is right. That is why I feel the Fraser-Keys bill which provides that the decrease to age 50 is realistic in a situation in which many people are caught in the transition period.

There is no displaced homemakers bill. There currently is the myth that women who work in the home are not working, so there is no credit given for those years toward getting new employment.

I think it is absolutely essential for the short run, and I also feel if we do provide training that it will not be that much of a cost.

On the other hand, as you said, there are many people fighting for increasing the time a person can work from 65 on and we are for that, too.

It is age discrimination, that is obvious, but I don't think that the two are in conflict with one another. I think it would be hypocritical to be fighting for not having the discrimination over 65 and ignoring the fact that women between those ages of 50 to 65 currently are being exploited in the marketplace.

MR. JACOBS. MS. Nagy, you touched on a point raised by Mr. Greenough in our hearings. I don't know if you were present when he testified. He is an author of the book generally on the subject of pensions, public and private, and he made the same points that the thing is all in reverse in terms of taxes for social security, that a person is taxed

on the social security tax that a person is paid now and not taxed on the benefits.

He suggested that it should be the other way around, too. One thing that might not be generally cognized is that when we talk about cash in social security benefits we are not talking about taxing people whose sole income is social security because the present Internal Revenue Code would not affect the persons at that income level in any case.

So, it means if for some reason or another that together with other income made you liable for the taxes otherwise you would still be liable for them even though part of your income was social security.

I think that makes good sense myself.

Dr. NAGY. It would correct what we feel is one of the major problems with the burden on the young family, that is really having a very difficult time surviving.

I teach family financial management courses at Michigan State University, and I have studied this area in depth. It is increasingly difficult for young families to survive financially. You would be amazed at the number of young couples who can hardly meet their basic living expenses, and particularly the single-parent family. She is out there trying to raise children, rarely getting child support, making \$7,000, \$8,000 or \$9,000 in a marginal income bracket and we are expecting her to pay 5.85 percent to the social security system and she needs much of that to put food on the table for her own children.

The woman on welfare who does not have to pay social security and costs of working is almost better off. The minute that woman steps out the door at the minimum wage job, she gets socked with taxes.

Mr. JACOBS. You made some allusion in your testimony to the situation that some people pay more than really they receive.

Would you elucidate on that?

Dr. NAGY. I am saying that there are some people who by the twist of fate do this. And, of course, social security is an insurance system, supposedly, although it is questionable, but the fundamental concept was to be insurance.

There are people who maybe were single and died before they got around to collecting benefits; or take the two-income family in a very middle-income category where the wife has been in and out of the labor market because of raising children. She will probably collect more from her husband's account than she has paid in for years. The woman who was fortunate enough to marry a man making good money gets far more back than was contributed.

Thus certain people have paid quite a bit and they don't get as much back and others get back far more than they put in.

The tax thing is reversed. It should be taxed to the person who has the benefits.

Why should a man who has worked all his life have to pay taxes on his social security contributions? If he drops dead at 65 and has no dependents, he paid taxes on money that he never had the opportunity to spend.

Mr. JACOBS. Why should a man or woman who has worked all of their lives pay taxes to support a public school system if he or she does not have any children?

I think the answer is we are all in the same boat.

Dr. NAGY. Oh yes. I think it would be fairer if it was taxable to the person when they received it, when they are usually in a very low tax bracket.

I have done a lot of work on economics of retirement. One of the things that you find is that a very small percentage have really total pension plans adequate to provide them with a luxurious retirement. Thus most would not pay tax on their social security.

Mr. JACOBS. Is there any further summation?

Ms. DEANE. I neglected to say that I have in my testimony something about putting the Federal service employees under social security and suggesting that their retirement annuities be put on top of that social security system in the same way the Railroad Retirement Act has worked it out.

You were expressing the sentiment for a universal social security, and I would like to underscore that, too. I think it is an unfortunate example that the Federal Government is giving to municipalities which are pulling out of the social security system or who were never in it in the first place.

Mr. JACOBS. That is the way we do things in the free world.

For example, here on Mount Olympus, sometimes called Capitol Hill, the wage and hour laws don't apply. The sex and color and all the rest of the discrimination laws do not apply, but they got in a little trouble a few years ago because they ran into trouble with God.

They didn't apply the District of Columbia health laws up here, but there was already a natural health law which was roughly in the same terms, and tuberculosis broke out among the workers in the restaurants here on Capitol Hill.

So, I suppose in the end, as that hot dog ad says, there is a higher authority.

Thank you very much for your testimony.

[The following was submitted for the record:]

STATEMENT OF HON. WILLIAM L. DICKINSON, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ALABAMA

Mr. Chairman, I appreciate the opportunity to express my support for legislation which would lower from 20 years to 10 years the time a former wife must have been married in order to be eligible for social security benefits under her husband's account?

It is grossly unfair to discriminate against an individual by means of such an arbitrary time period, and I believe the only fair way to resolve this problem is to eliminate the time period altogether. However, if for economic reasons it is necessary to have some limitation, I certainly feel 10 years is more equitable than 20 years. After all, we allow individuals to have a vested interest in a pension plan in 10 years, so why should we not allow a woman who has invested 10 years of her life in marriage to have a vested interest in her husband's social security account.

I am aware of a specific example of the injustice of the current situation which I would like to share with you. A woman, who gave up her own career to aid her husband's military career, was married for 19 years and 3 months. Her contribution to the marriage was not monetary, but it allowed her husband to pursue his career in the manner which he desired. Now the skills she acquired before her marriage are obsolete and she has a progressive hearing loss which up to now has made it impossible for her to hold a job continuously in order to be eligible for social security benefits in her own right.

I believe her contribution to the marriage should entitle her to a prorated share of the monetary benefits for which her former husband will be eligible. It certainly makes more sense to give her a prorated share of the benefits than

it does to allow all those benefits to immediately accrue to a new wife—an alien—after only 3 months.

Is it fair for a woman who has been married in name only, never actually living with her husband or contributing to his earning potential to be entitled to benefits after 20 years simply because neither party sought a divorce? Is it fair for a wife of 3 months to be eligible for her new husband's social security benefits while denying the first wife of 19 years (or less) any benefits? I think not, and I urge the committee members to report legislation to eliminate the time period or at least lower it to a more reasonable number of years.

Thank you, Mr. Chairman.

STATEMENT OF HON. MILLICENT FENWICK, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW JERSEY

Mr. Chairman, thank you for this opportunity to express my views on our Social Security system. Of all the requests for help which come to me from my district, the biggest single subject is Social Security. We are all acutely aware of the problems, but I would like to highlight a few of them and address some of the remedies which have been proposed and I support.

The current system is based on old assumptions about family structure. When the Social Security system was first designed, only a tiny percentage of women worked. Today, about 90 percent of all women have worked outside the home for pay for some part of their lives and women make up almost half of our paid work force. Because of the rising divorce rate, more and more women have become the main breadwinner for their households.

Widows over 60 who remarry may receive the higher of 50 percent of the new husband's benefit or 50 percent of the former husband's benefit, where they had been receiving 100 percent of the deceased husband's benefit. It is common knowledge that many senior citizens forego marriage because they can't afford to lose Social Security benefits.

Divorced women must have been married at least 20 years to collect benefits based on their husband's earnings, unless they are over 60. Today one in three marriages ends in divorce. Women with young or disabled children can collect "mothers benefits", but many are divorced after their children are grown. Widows under 55 are not eligible for benefits, unless they can qualify for "mothers benefits."

Divorced women and young widows who are lucky enough to have been employed and develop their own wage records still suffer. In 1972, two-thirds of women workers employed full time earned less than \$7,000 a year, while three-fourths of their male counterparts earned over \$7,000 a year. Because of lower wages and less consistent employment, the average Social Security retirement benefit for male workers was \$229 per month in 1976, but only \$182 for female workers.

Some of the inequities in the system have been addressed by the Supreme Court. The *Wiesenfeld* decision gives widowers the right to collect "mothers benefits" when they have dependent children to support. The *Goldfarb* decision subjects men and women to the same dependency test. A new dependency test has now been proposed for everyone, but it will still create problems. For example, a man loses his job at age 60. His wife goes to work to support the family, at a low paying job. If her husband dies three years later, she flunks the dependency test and collects benefits based on short-term employment at low pay. Above all, the new dependency test is estimated to cost \$70 million to administer while it will save \$100 million.

Representatives Don Fraser and Martha Keys have proposed a fair and straightforward solution to these problems—H.R. 5319. As you know, the bill would phase out derivative benefits, and allow married people to establish separate Social Security records based on their combined wages. It is based on the premise that married couples are economic partners, regardless of who works to support the family.

The bill would allow married individuals who file joint income tax returns to be credited with 50 percent of their combined income or 75 percent of the higher salary up to the limit on covered earnings. This would help the spouse who works for lower pay or works intermittently, and would give a homemaker credit for her contribution to supporting the family. It would remove the need for complicated dependency tests and would insure protection for more disabled citizens,

divorcees, widows and widowers. It is a simple solution to changing social needs. I am a cosponsor of the bill and hope you will give it serious consideration.

I am also concerned about the disastrous effects increases in Social Security benefits often have on someone's eligibility for other federal programs, for example, Medicaid, housing assistance, veterans' pensions and food stamps. One constituent wrote me in despair—the rise in Social Security benefits put him \$3.00 over the income limit for Medicaid patients. He was 48 and totally disabled. He tried to refuse the \$3.00, but that is illegal. Legislation has been introduced to provide that no one receiving federal assistance under other programs shall be disqualified by a rise in Social Security benefits. This legislation is urgently needed.

Most of all, we must repeal the earnings limitation for retired people. Unearned income is already excluded. Senior citizens who are not blessed with some form of unearned income should not be penalized for trying to improve their standard of living. Social Security provides a subsistence income, but many elderly citizens find they can hardly afford food, shelter and medical treatment they need to survive.

The question of Social Security financing is complicated. But it seems to me that the ceiling on taxable earnings is too regressive. To remedy the projected trust fund deficit, I would rather see an increase in the taxable wage base than an increase in the tax rate.

Another point I would like to raise: Should Social Security benefits not be considered as taxable income? It has never seemed fair that someone with a comfortable unearned income should be able to consider Social Security benefits a tax-deductible item.

Thank you again for this opportunity to comment.

STATEMENT OF HON. MARILYN LLOYD, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TENNESSEE

I would like to take this opportunity to urge the Members of the Social Security Subcommittee to give very careful consideration to the Equity in Social Security for Individuals and Families Act during their hearings on the Social Security Trust Fund and related issues. It is extremely important that we do not continue to overlook the fact that the role of women in the American economy has changed significantly and that the original Social Security law does not reflect the needs and rights of women in today's world.

Since the Social Security system was first begun in 1935, it has grown to become the most far-reaching and complex Federal program in existence and one which affects more Americans than any other. Millions of Americans, men and women, depend on social security not only as a retirement plan, but also as a disability, health and life insurance plan. Of course, these were not the original purposes of the Social Security system, which was to serve only as a supplement for those people who could not support themselves on their private pensions.

However, regardless of any discussion as to what the purpose of the Social Security system should be or how much one should depend upon it in one's old age, the system should treat women equitably and that includes all women—whether we are talking about homemakers, divorcees, elderly wives and widows, high-earning professionals, low-paid domestics, the wives of laborers or the wives of executives.

The Equity in Social Security for Individuals and Families Act will allow us to take the first step toward ensuring that fair treatment. This bill will set up a new recordkeeping system which will give the maximum number of adult Americans their own social security records according to which they can collect benefits on the basis of their own records.

It is simply unrealistic to consider that each American woman for the length of her life will be either a housewife or a wage earner. Yet the Social Security system does just that. In light of the fact that over 90 percent of all women will at some time work outside of the home, present Social Security guidelines seem sadly out of date.

Most men in their lifetime will not find their careers and thus their Social Security records interrupted because of family responsibilities, namely having children. On the contrary, most women will work until they have children—she may reenter the work force at some point when the children go back to

school or leave home—or she may become divorced—a much more frequent situation now that the divorce rate in our country is now at the mark of one out of every three marriages. The Social Security system does not recognize work done in the home as “work” for their record keeping purposes. What results then is that most women in our country face the Social Security eligibility age with many gaps in their earnings record—the average monthly benefit check of a woman is considerably less than that of a man despite the fact that the benefit formula is weighted in favor of low-income earners.

We must also recognize the fact that women are much less likely than men to be the recipients of private pensions. Disproportionate numbers of women are still relegated to the low paying jobs in our society. These are the jobs which are more likely not to pay private pensions upon retirement. And when a woman's job does, the average length of service which she gives will normally not be sufficient to allow her to qualify for the pension.

For these reasons, women need fair treatment by the Social Security system that much more.

It would certainly be very impractical to expect the Social Security system to correct all of the inequities which women have experienced in the area of employment. However, what it can do—and what this legislation will allow it to do—is to assume that work in the home has a very real economic value and that marriage is an economic partnership. Social Security records would be adjusted annually to credit each spouse with a share of the family income. In this way, the woman who is a housewife for her entire life and never works outside the home, will have the opportunity to build up her own Social Security record rather than being solely recognized as only a dependent of an employed husband. The woman who leaves and reenters the work force will not have earnings gaps in her record. And the divorced woman will have an earnings record to take with her from a marriage which lasted less than the required 20 years.

Many women find that when it comes time to collect their Social Security benefits, they are entitled to higher benefits as a dependent of a working husband than they are entitled to on the basis of their own work records—although a dependent wife is entitled to only half of her husband's benefit. It hardly seems fair that in cases like this—a woman would get no more benefits than she would have been given if she had never worked in her life and had never contributed anything in Social Security taxes.

Also unfair is the fact that a divorced woman who was not married to her exhusband for at least 20 years is not eligible for any of these benefits. Yet a subsequent wife can collect his benefits even if she is only married to him for a short time. Until a woman who has never worked outside the home has been married for at least 20 years, she has no guarantee that she will ever get a penny from Social Security or will have any means of supporting herself when she reaches retirement age.

Approval of this legislation would help to correct all that. Under this system, almost every woman would reach retirement age with a Social Security earnings record according to which she could collect her own Social Security benefits—as would every man.

Complete equity under the Social Security system will certainly not be accomplished by these proposed changes. Reform is complex and these proposals are not perfect. Yet approval of these changes will go a long way toward providing women with a substantial degree of equality and the reassurance of a greater amount of security in their retirement years.

Thank you.

STATEMENT OF HON. BARBARA A. MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman and Members of the Committee, I appreciate this opportunity to make a statement regarding the necessity for reform of the Social Security system. I will direct my remarks toward the problem of equal treatment of men and women.

First, let me say that I support the approach of the Fraser/Keys bill with its emphasis on earnings-splitting and denounce the Administration's stop gap remedy of a three year dependency test.

Social Security was originally conceived as a family protection program. Forty years ago, the perception was that women worked in the home and were financially provided for by a husband for their entire life. The situation

has dramatically changed. In 1940, only one out of six marriages ended in divorce, whereas, today it is one out of two. Between 1940 and 1975, labor force participation for married women rose from fifteen percent to forty percent; fifty percent of all married women were in the labor force in 1975. The fact is that there is no one pattern that describes life in the American household. Some married women work outside the home their entire life; some work for a while, leave to raise children and then return; others spend very little time working outside the home.

Not only have the patterns changed over the past forty years, but people's perception of the institution of marriage is different. A wife is no longer viewed as a dependent of her husband, but an equal partner. Regardless of who earns the actual dollars, it is the combined effort of two people that makes the household function. (In fact, various attempts have been made to give a dollar value to the work done in the home; estimates range from thirteen thousand dollars to twenty thousand dollars.) For these reasons, the earnings-splitting concept is the correct approach to Social Security reform.

In two recent rulings of the Supreme Court, the dependency concept was called outdated and archaic and the Court ruled that men and women must receive equal benefits.

Long before these rulings, Congressman Fraser and Arvonne Fraser saw the inequities in the system and had developed legislation to correct them. The concept of earnings-splitting is the basis for the Equity in Social Security for Individuals and Families Act, which was introduced in the ninety-fourth Congress. Earlier this year, my distinguished colleague, Congresswoman Martha Keys joined Congressman Fraser as a sponsor. I have cosponsored this legislation. I realize that such reform is beyond the scope of H.R. 8218, yet I do want to take this opportunity to point out the need for speedy change.

Today, a woman dependent on her husband's Social Security suffers the following inequities: a woman loses all rights to Social Security if she is divorced before twenty years of marriage; A woman working in the home is not eligible for disability benefits; a woman over sixty-five cannot receive Social Security until her husband retires.

The Fraser/Keys bill will correct these inequities. Each spouse will receive an equal portion of the wages earned by the couple. While married, a couple would have an identical record. Once the marriage ended, by death or divorce, the person would have their own benefits. It would stay their record for life. The bill also covers the transition period between systems; so no one is denied benefits in the interim. The Urban Institute has endorsed the concept of earnings-splitting. Presently, there are indepth studies underway at the Department of Justice and HEW.

I am opposed to the Administration's proposal of a three year dependency test as the solution to conform the Social Security system to recent Supreme Court rulings. It is a stop gap approach which in fact denies benefits to many women who were covered under current law. But more importantly, my objection is because it reinforces the erroneous concept of dependency. Thus, I urge you to follow the recommendation of my colleagues, Representatives Fraser and Keys that HEW must complete its studies of earnings-splitting and make a report to Congress within six months with its recommendations for a comprehensive change in the system. Thank you.

STATEMENT OF HON. JOE MOAKLEY, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MASSACHUSETTS

As a co-sponsor of the Equity in Social Security for Individuals and Families Act, I would like to take this opportunity to stress the importance of action on this issue. Fairness and simplicity urge our immediate correction of long instituted inequities.

Perhaps I should first prove that these inequities do exist within the social security system, but this proposition seems so obvious and so thoroughly accepted that further elaboration appears extraneous. My time is better spent in stressing the far-reaching nature and effects of these inequities.

The sexual bias built into social security reduces payments to all women, many children and some men. Women are shortchanged—primarily because of unfair treatment of the employment "gaps" in her record. For each year a woman is out of the workforce, a big "zero" is added in to the wage totals social security

uses to calculate her average income (for payment purposes). Naturally, her average comes out much lower. Moreover, a woman is given no credit for her work in the home, despite a social security determination that the average economic value of a housewife in 1972 was \$4,705. Then, too, if she divorces her husband before their 20th anniversary, she loses any right to benefits from her husband's work. These and other regulations combine to result in a low income record for the working woman and no independent record at all for the housewife.

Children suffer indirectly from their inequities. They get little or no payments for their mother's work. In addition, since social security permits no payments for the cost of replacing a homemaker, if the mother dies, the family is without recourse unless the mother worked at some time; even then, her gaps in employment will reduce her income. Children also lose out due to the fact that a woman who works often gets less money than when she accepts her dependency benefits from her husband's working record. As unjust as it seems, a married couple with two working partners can end up with smaller payments than the couple in which only the husband worked. And if one person in a working couple dies, the widowed spouse will get much lower benefits than the spouse of the couple in which only one partner worked. In short, children are denied the reward of their mother's payments into social security. The injustice of the underlying stereotypes is clear.

Men also suffer from unjust stereotypes. Not only do they benefit little from their wives' working, but they also lose out if they are the widower of a working woman. In this case, they can collect dependency benefits only if they can prove they were dependent on her for at least 50 percent of their income. (Women are entitled to these benefits automatically).

In summation, then, sexual bias affects the majority of the American population—men, women, and children. Moreover, it denies equal benefits for equal work. Men and women pay the same amount of social security taxes, yet women receive higher returns applying as their husband's dependents, while men are denied returns for being the household "head". Children are restricted to the benefits earned by their fathers. Fairness demands correction of these inequities.

There is a second reason for moving to correct existing inequities, however, and that is the need for simplicity. The problem of separate regulations for men and women is a double load of bureaucratic red tape. The complexity of figuring separate procedures for partners in the same marriage, explaining them to the public and then fighting resultant legal battles for equal treatment constitute a tremendous administrative burden. Clearly, both men and women can pay taxes and earn money; each should have a work record and receive comparable benefits.

The Equity in Social Security Act goes far to end discriminating measures. It aims for both fairness and simplicity, while retaining a sense of a marriage's economic interdependency. Its measures are comprehensive to match the persuasive nature of the problem, yet its provisions are easily understood. Certainly, it will be less complex than current regulations. To my mind, it will be a significant improvement over the preceding chaos.

I hope I have conveyed some degree of the sense of urgency I attach to this issue. Inequities abound in institutionalized security. It is time we got rid of them. Now. I urge that achievement of equity in social security be a major undertaking of this subcommittee.

STATEMENT OF ELLEN V. DEALLENBACH, BOCA RATON, FLA.

Statement on social security demanding equal treatment for men and women under social security, particularly in view of recent Supreme Court decisions.

In 1937 when social security became the law, men and women working under covered employment had to pay a set premium for an actuarially computed benefit. Some years later the Social Security Act was amended to include a non-working wife benefit. This amounted in substance to one-half of her husband's benefit which had been reduced from the previous schedule. At that time the working woman had her benefit reduced, but it did not include one-half of her benefit for her spouse (either non-working or working).

It is now 40 years since this discrimination under the Social Security Act occurred, and it is time this inequity in the law be amended. In view of recent Supreme Court decision it is time to adjust this matter now.

STATEMENT OF MRS. ALICE J. McDERMOTT, GUILFORD, CONN.

In August of 1956, I was widowed at the age of 48 yrs. My husband was 51 yrs. of age and had been covered with social security insurance since its inception in 1937 at maximum. We had no hospital insurance covering his illness of several months. I had not been in the labor market for the 30 years of our marriage, had moved back to Connecticut from Maryland the previous year and things were bad for me. A visit to the Social Security office informed me that I would receive \$255 then and nothing more till I reached 62 yrs. but if ever the qualifying age were to drop for widows, then to apply immediately as never, but never would a widow receive 100 percent of her husband's coverage. Of course, I had to immediately go to work and years passed and in 1968 the age for widows did drop to 60 yrs. and I went to the office and again was advised to take it then, and I did—receiving at that time about \$70 and the right to earn about \$1,600 per year without losing benefits. Of course, the figures have changed during the ensuing years and I have always worked my maximum earnings, had to.

In 1973, I reached the age of 65 and applied for coverage under my own earnings, and mostly because my earnings were so restricted during the period of receiving benefits, my check would about approximate the one I was receiving on my husband's account (reduced widow's benefit at about 70 percent and, as I had expected, the widow could now receive 100 percent of her husband's account. I lost all around. My check at this time is about \$215—less Plan B and incidentally SSI is about \$188. I am covered both by my own account and my husband's yet receive very little over poverty level. Only covered wages affect the benefit check and that affects me, while others I know of have income of about \$48,000 and still receive high social security checks. In fact a friend of mine has about the highest check and his wife has never worked and she gets 50 percent and they receive 300 percent of mine. It does seem as though the laws should be changed to correct some of these inequalities and make life a bit more bearable for me and many countless more. Please consider situations and facts more.

JOINT STATEMENT OF THE CALIFORNIA STATE TASK FORCE ON OLDER WOMEN (NOW), JEAN STERN, COORDINATOR; SAN DIEGO BUSINESS AND PROFESSIONAL WOMEN, SARA VAN AMMELROOY, PRESIDENT; UNITARIAN-UNIVERSALIST WOMEN'S FEDERATION, SAN DIEGO, MARY B. MASCHAL, PRESIDENT; COMMITTEE FOR EQUITY FOR WOMEN IN SOCIAL SECURITY AND PENSIONS, VIRGINIA W. TAYLOR, EXECUTIVE SECRETARY; AND SAN DIEGO NATIONAL ORGANIZATION OF WOMEN, JOAN CASALES AND FLORENCE H. COHEN

We are aware of the importance of the Social Security program in this country, since it provides the major source of income for over half the older people in this country.

We understand that the original Social Security Act covered retirement pay for only the wage earner. While the Social Security Program has been amended many times to respond to changing needs, the implicit assumptions regarding women's economic role and the status of the family structure has not changed. Retirement income for women has been severely limited by these outmoded concepts. At present:

1. The Social Security System assumes that women are always economically dependent on their husbands and have only a peripheral attachment to the labor force. This is no longer true: in 1974, half of all married women worked in the paid labor force—72 percent of them full time. The homemaker who works, because she is most likely to work at a low-paying job, and because homemaking and motherhood reduces her work years, often finds (although she pays social security tax on the job) that she is better off electing one-half her husband's benefits at retirement than those benefits based on her own work record.

2. The Social Security System assumes that the homemaker's work does not have economic value, and therefore should not be entitled to social security disability. If a man is disabled, the homemaker can take care of him (he collects disability benefits). If, on the other hand, the wife is disabled, the husband cannot give up his job, and often outside help must be hired. This puts a financial strain on the family.

3. The Social Security System assumes that all marriages last "until death do us part". The rising rate of divorce belies this assumption. At present, a home-

maker must be married 20 consecutive years to be eligible for social security benefits as a spouse. This eligibility is only honored when the wage earner collects Social Security. If the wage earner does not collect Social Security benefits, the spouse, even though 65, cannot get Medicare!

4. The Social Security System assumes that husbands will be able to provide enough income for his widow to live adequately in the case of his death before she reaches the age of 60. Owing to high unemployment (and especially the scarcity of jobs for women at this age) and inflation, presently there is a large group of widows with no or very little income. If women who do not at present qualify for social security were able to get benefits, many would not be forced to go on welfare.

Older women are the poorest segment of our society! In 1974, of the 7.5 million women living alone, and over the age of 65, half were living on less than \$1,880 a year. This problem must grow if major reforms such as the Fraser-Keys bill does not become law, because a large number of women outlive their husbands. Do women have to live longer on less? Is this Justice?

That is why we urge the House Sub-committee on Social Security to recommend passage of the Fraser-Keys bill, H.R. 3247, which addresses itself to the problems related above by giving Social Security credits in the homemaker's own name, as well as providing disability for homemakers and making some financial provisions for the time between widowhood and social security.

We are, of course, concerned with the financing of Social Security. However, we must note that we heard no questions raised on where the money was to come from when the Supreme Court made the recent decision that widowers should get social security benefits on the same basis as widows. Is Justice for women less important than Justice for men?

Under the Fraser-Keys bill, husband and wife share equally their social security benefits, based on the concept that marriage is a partnership and each partner contributes to the economic viability of the marriage. At present the spouse's benefit is 50 percent of the wage earners. So it seems Congress expects a wife to live on 50 percent of what her husband lives on. Is this Justice?

In order not to lose their social security benefits, more and more people are forced to live together without the benefit of marriage. Since under the Fraser-Keys bill, homemakers will have their Social Security credit in their own name, and dependency on a spouse for social security will be a thing of the past, remarriage will no longer be financially disastrous. What price morality!

Mr. JACOBS. Our next witness is Mr. John D. Crosier, president of the Interstate Conference of Employment Security Agencies.

We welcome you, sir, to the committee. Please proceed.

**STATEMENT OF JOHN D. CROSIER, PRESIDENT, INTERSTATE
CONFERENCE OF EMPLOYMENT SECURITY AGENCIES, AND,
DIRECTOR, MASSACHUSETTS DIVISION OF EMPLOYMENT
SECURITY**

Mr. CROSIER. I speak to you today as the president of the Interstate Conference of Employment Security Agencies, the organization that represents the 53 administrators of the employment security systems in this Nation.

I also speak as an appointee of the Speaker of the House as a member of the National Commission on Unemployment Compensation.

I speak today, Mr. Chairman, as a part of the social security family under title IX, an important but little known partner in the social security system.

We speak today particularly to combined old age survivor disability income tax amendments of 1975, section 8 of Public Law 94-202.

It is the concern of the Employment Security Administrators that this is our first opportunity to talk to the Congress about the impact of some social security legislation on a system in the United States

known as unemployment insurance that last year paid benefits of some \$14 billion to unemployed workers.

While there is no direct relationship between what goes on in the social security program and unemployment insurance there is an indirect and critical relationship to what goes on in the unemployment insurance system.

While it may be possible for the Social Security Administration to forgo the requirements for quarterly reporting for employers for social security purposes, this action would have a bearing and a direct relationship on the ability of the unemployment insurance system of this Nation to function.

The reason for it is that if the Federal requirements on the part of social security is changed to annual reporting, it will bring a substantial pressure on States to follow.

The way the law is written now it will be perfectly possible for States to continue to insist that for purposes of unemployment insurance the States can require quarterly reporting from employers for the purpose of unemployment insurance.

There is another implication which the Congress has been consistently reminding us of and that is the need to detect fraud.

If, in fact, the unemployment insurance system is driven from quarterly reporting by virtue of this act, then it will, in fact, make it virtually impossible for the unemployment insurance system to have a meaningful fraud-detection program.

I believe these are two concerns that the Congress did not consider when it passed the so-called Brock amendment, and I think they are concerns that they should seriously review.

I would suggest to the chairman that there are three members of this subcommittee, Congressmen Steiger, Ketchum, and Pickle, all of whom have had experience on the unemployment insurance side of the ledger who could address the committee on these particular impacts.

The problems are unique, for if the system is forced to abandon quarterly reporting in the interest of timeliness and collecting wage information, there are two options.

One is to go to the request reporting which today applies in only 13 States, 39 units today use wage reports.

There have been varying estimates, Mr. Chairman, of the cost to the States to return to request reporting. The estimate that we have from the Department of Labor is in the vicinity of \$45 million to return to a wage request system for the 39 units that today employ wage reports.

In addition, I understand that social security has estimated that the savings that would accrue to employers is in the vicinity of \$265 million.

We believe that if the States continue to demand, and I expect substantial numbers would, quarterly wage data for the purpose of unemployment insurance, then the proposed savings amount must be reviewed.

A problem that annual reporting could drive the unemployment system to determining benefits for unemployment insurance on year-old wage data, which is contrary to all that is embodied in present unemployment insurance legislation, which is to say that we tie one's

current wage to his benefit amount in the event that he or she is unemployed through no fault of their own.

In addition, as far as the Social Security Administration is concerned, in the entire area of fraud detection, if the wage reports capability is eliminated, then the 39 States that now depend on that would be driven into the position that the 13 wage request States have of having no cross-matching capability for detecting fraud, and we would be unable to collect, as we did in calendar year 1976, something over \$119 million in overpayment.

Mr. Chairman, the reason for us expressing our concern at this point in time is we believe that the issue is critical to the survival of the unemployment insurance system.

We think these are matters of serious concern that have not been heard by the Congress. We believe as a minimum that more time is required for careful consideration and a sound judgment to be made considering all of the impact that this will have on a sister system that has not been discussed in front of this panel.

Some have said that it is not a social security responsibility, but I call to the committee's attention that unemployment insurance is title IX of the Social Security Act and it has a direct bearing.

Strangely absent from public testimony to date is a concern from our Federal partner, the Department of Labor, because of the already announced concurrence of the Secretaries of HEW and Treasury, the Office of Management and Budget, and the avowed support of the administration as demonstrated in the bill which is before you, filed by the chairman, Mr. Burke. I believe that we in all candor in the unemployment insurance system are fighting an uphill battle with your committee on how we feel about the impact that this will have on the ability to administer the unemployment insurance system in this Nation.

I believe that we are probably in the position of coming here with too little, too late. I would implore the committee to hear the arguments that this will have on a system that is seldom discussed when we consider the many things that you have had to listen to in the days before this testimony and those that will come after it.

I would not be surprised if I were the only person who sat here in the deliberations of this committee in undertaking to voice concern about this particular issue.

Thank you for the opportunity to be heard.

[The prepared statement follows:]

STATEMENT OF JOHN D. CROSIER, DIRECTOR, MASSACHUSETTS DIVISION OF EMPLOYMENT SECURITY, AND PRESIDENT, INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES, INC.

Mr. Chairman and members of the Subcommittee, I am John D. Crosier, Director of the Massachusetts Division of Employment Security. I am President of the Interstate Conference of Employment Security Agencies, Inc., and, by appointment of the Speaker, a member of the National Commission on Unemployment Compensation.

Mr. Chairman, I appreciate the willingness of the Subcommittee to provide this opportunity for testimony on a matter of grave concern to the unemployment compensation program and its effective administration. As you know, the so-called Brock amendment was adopted as a Senate amendment to a House bill, after only a limited floor discussion. There were no prior hearings at which the subject could be addressed. This hearing thus provides the first opportunity for the State unemployment compensation agencies to be heard.

The "Combined Old-Age, Survivors' and Disability-Income Tax Amendments of 1975," Section 8 of Public Law 94-202, is to become effective January 1978 if no further action is taken by Congress. This law provides for annual reporting and processing of employee wage reports which employers are now required to file quarterly. H.R. 8057 introduced by Congressman Burke June 28, 1977 would carry this change even further—the annual report would record only a single entry for each individual's wages for the year, with no reference to a quarterly breakout.

From its inception in 1935, the unemployment insurance program established by Title IX of the Social Security Act has been based on use of quarterly wage data. All 52 State employment security agencies, without exception, require employers to file quarterly unemployment insurance tax reports and pay State unemployment insurance tax on a quarterly basis, and 39 of the 52 jurisdictions require use of forms which provide quarterly wage data for individual workers.

We recognize that neither present nor proposed requirements directly affect Federal or State unemployment insurance law provisions. Nevertheless, they have very serious implications for the UI program: (1) in terms of the use UI now makes of quarterly wage information reported for IRS and Social Security purposes; and (2) in terms of the pressures that will result at the State level for corresponding switches to annual, rather than quarterly, reporting by employees for UI purposes. This pressure is inevitable because unemployment insurance and Social Security employer records are intertwined and an employer's savings from annual reporting would be minimal unless UI reporting was put on the same basis as Social Security.

In plain terms, we think both the enacted and the proposed legislation would result in major modifications of current operations that would be extremely detrimental to the program.

Quarterly wage data on individual workers are used by State unemployment insurance agencies for a variety of essential purposes. These include determination as to whether workers have sufficient base period earnings or work history preceding their unemployment to qualify to receive unemployment compensation and, if eligible, the amount of unemployment insurance payable to a worker for a week of unemployment.

Many substantive provisions in State unemployment insurance laws are based on the availability and use of such quarterly wage data. The "base period" on which eligibility and benefit amounts are determined is defined in 35 State unemployment insurance laws as the first four of the last five completed calendar quarters preceding an initial claim for benefits and in four additional State laws as the last four completed calendar quarters immediately preceding such a claim. State-law provisions as to qualifying wages and benefit formulas most commonly require reference to work earnings during the highest quarter of the base period.

Theoretically, States may continue to maintain their present reporting requirements, independent of developments associated with social security reporting requirements. If States do continue quarterly wage reporting, employer savings that might be derived from using only annual wage reporting for Social Security and IRS purposes would, as I have pointed out, be essentially negated. It is more realistic to anticipate that there would be strong employer pressures in the States to eliminate quarterly wage reporting requirements. This would in turn lead to one of two major changes—

First, States could convert to a system of request reporting now in use in 13 States. Detailed wage data is required from an employer, in a very short turnaround time, when an individual files a claim for benefits.

The administrative changes required by switching from regular quarterly wage reports to a system of request reporting would be substantial. It would require a restructuring of a State's operations and it would be much more costly to operate, especially in periods of high unemployment. It is not as convenient, prompt, or reliable as a system under which necessary wage data already are in the possession of a State agency. Thus, such a change may be expected to cause increased delay in the promptness of administrative determinations and the payment of benefits.

The payment of benefits promptly is a Federal law requirement. Pressures on the system resulting in delays in payment of benefits have culminated in several instances in Federal court actions. While some States with request reporting have maintained relatively prompt payment levels, the request reporting system is by its very nature more time consuming, in requiring communications to and from

employers prior to determination of eligibility, than access to wage information already available in State agency files.

Second, Another approach now utilized by only a very small number of States, and even then with some reference to quarterly wage information, is the use of annual wage requirements. In only a single instance is there a benefit formula setting the benefit eligibility and weekly benefit amount in terms of annual earnings.

From a wage loss measurement standpoint, annual wage formulas are fundamentally inconsistent with basic concepts of unemployment insurance. Under annual-wage benefit formulas the weekly benefit amount is computed as a fraction of base-period wages. This type of formula was adopted presumably because of its administrative simplicity in determining benefits, or on the theory that a worker's standard of living is based on his annual earnings. However, weekly benefits computed as a percentage of annual wages bear no relation to normal weekly wages; the effect of the formula is to produce inadequate benefits for a large proportion of claimants.

The flat earnings requirement, which characteristically accompanies the formula provides no assurance that any claimant's weekly benefit amount will bear a reasonable relation to his normal weekly wage.

Under annual-wage formulas, any unemployment in the base period affects the weekly benefit amount. Since most claimants have periods of unemployment in the base period, annual-wage formulas produce lower average weekly benefits in relation to statewide average weekly wages than other formulas.

In addition, the earnings on which benefits are based are remote from the period in which benefits are paid, in the extreme case more than two years. Obviously, such remote work history is a poor measure of current job attachment and appropriate benefit levels.

Another major area of overriding importance to be affected by the change is that of controls for detecting overpayments. The most common type of fraudulent overpayment in unemployment insurance occurs when an individual who is a claimant during a period of unemployment is called back to work by his previous employer or obtains a new job. It is frequently possible for such individual to continue to meet his previous reporting requirement at the UI office while fully employed or working part-time. If there is no record in the agency to give notice of his return to employment, either on a concurrent basis or at a later date, a great volume of payments can go undetected.

All States have developed methods and procedures for the detection of fraud and overpayments, including a variety of post audit techniques. The most productive and most commonly used plan is the cross-matching of benefit payments with wage records. This involves the comparison of quarterly wage records with benefit payments made for the same quarter. This program would be eliminated in its entirety for wage record States if any method of reporting other than wage records were to be adopted. In calendar year 1976, \$119 million in overpayments was uncovered by State agencies. The greater part of this amount was discovered through the crossmatch process.

In addition to the States which use quarterly data from their own records, the 13 request reporting States have utilized similar data for control purposes, from current Social Security records. This source of data has been eliminated due to an interpretation of the confidentiality and disclosure provisions of the Tax Reform Act of 1976. The ICESA has disagreed with this interpretation and the Social Security Administration has under consideration an amendment to their regulations which would again make the data available to State UI agencies. However, if this is done and the Brock amendment or H.R. 8057 becomes effective next year the data would not be available for fraud control purposes after either of those laws take effect.

This means that not only would the UI system be deprived of its most important method of detecting fraud and overpayment, but the welfare program would lose its principal method of checking on duplication of welfare and employment.

In the area of tax collection relatively little would be achieved in savings to employers by a shift to a system of annual wage reporting unless additional radical changes were made in the system of tax collection. Employers would have to continue to file quarterly summary tax returns and make quarterly or monthly tax payments. Thus it would remain necessary to compute wages earned by workers on a quarterly basis to determine the required amount of tax payments. The cost of reporting such data to State employment security agencies after

computation is a small fraction of the cost of the total accounting process. Nor would a change to a system of annual tax payment be desirable. A single annual tax would be more difficult to pay than tax liability charged in modest quarterly installments. Opportunities for large tax delinquencies in collection would be increased. If State unemployment insurance taxes were paid annually, some States would have difficulty in paying benefits during the entire year, particularly if unemployment increased suddenly, in view of modest financial resources.

Mr. Chairman and Subcommittee members, I have expressed my concerns in this detail because I believe they are basic to the conceptual and administrative fundamentals of the unemployment compensation system as we now know it. This is, to my best knowledge, the first time these concerns have been set out for the Congress. They are matters for serious consideration by the Federal Government, since the framework for the unemployment insurance system is established by Federal law; by the States who have the responsibility for administering the program; by employers who have the responsibility for furnishing all reports that are being considered and who are responsible for the direct payment of the taxes that finance the system; and by the workers, whose fundamental rights are involved in a workable and equitable system. Quarterly reporting was developed in the UI program because the objective was to relate benefits to recent wages. This objective is still vital. Simplification of employer reporting is important but should not be accomplished at the expense of obtaining data essential to operation of the program.

We think more time and careful consideration is required for sound judgments to be made. At the minimum, we believe some later date than January 1978 should be specified for implementation of these changes in order that all of the considerations we have set forth may be more comprehensively evaluated.

Mr. JACOBS. Thank you, sir.

You may be the only person to sit before the committee but I can tell you that the employment security people in my own State have written me on the subject, and you have represented them as well.

The problem is, as you say, one of the horse and the barn door, to a certain extent. It is like the Australian Bushman who wanted to get a new boomerang but couldn't figure out how to throw away his old one.

The system has been there for 2 years now yet at the same time—I happen, by the way, to sit on both the subcommittees, and unemployment has now been slightly changed, welfare and unemployment, as well as the Social Security Subcommittee.

I guess all I can tell you now is that I hear you and I will join other members of the committee in taking out our calculators and see if in the figures any miracle is possible.

I realize the hardship that you are describing.

Thank you for your testimony.

For those who do not read the record on the full committee, I think I shall bring the matter up when we get to markup.

Mr. CROSIER. Thank you, sir.

Mr. JACOBS. Thank you very much, Mr. Crosier, for your testimony.

Are the folks in the final panel listed on the schedule today present, that is, Mary Marshall, Mrs. Janover, and Dr. O'Donnell?

PANEL CONSISTING OF MARY A. MARSHALL, MEMBER, VIRGINIA HOUSE OF DELEGATES; JEAN L. JANOVER, MEMBER, COMMITTEE ON AGING, COMMUNITY SERVICE SOCIETY OF NEW YORK, ACCOMPANIED BY DR. CHARLES O'DONNELL

STATEMENT OF MARY MARSHALL

Mrs. MARSHALL. My name is Mary Marshall. I live in Arlington County. I am one of Joe Fisher's enthusiastic constituents. I represent

Arlington in the House of Delegates of the General Assembly of Virginia, and I am chairman of the Commission of the Needs of the Elderly there.

This is a special legislative committee similar to a special committee in the House. I have been working with the other women members of the General Assembly on legislation affecting divorce, inheritance, and taxes.

We have been particularly concerned with the problems of the homemaker and it is those concerns that bring me here today.

Young women now trust homemaking as a career less and less. They are afraid to stay home and take care of their children lest they be left alone and penniless in the future. They have seen what happens to their widowed or divorced mothers, aunts, and friends.

The widowed homemaker is not entitled to social security until she is 60. Until she reaches that age she must support herself.

The employment service tells us that it is extremely difficult for a regularly employed worker to find a new job after reaching the age of 45. You can imagine the problems of a woman over 45 who has never worked or who has been out of the work force for years.

The younger widow receives social security benefits as long as she has children under 18. Then she joins the job hunt.

The divorced homemaker has the same benefits as a widow if her marriage has last 20 years. Otherwise, she has nothing. No other pension plan requires 20 years on the job before the pension vests.

The increasing divorce rate means there will be more and more homemakers with no skills and no social security benefits of their own or their husbands'.

The consequences of our policy toward homemakers are:

1. A tremendous increase in the demand for day care for children so that their mothers can work and.

2. A large population of poverty-stricken widows and divorcees. Fifty percent of single women over 60 are living at or below the poverty level.

A woman should be able to choose homemaking and care of children as her career. Freedom of choice is disappearing, and women are working as a matter of necessity. Hence the demand for day care.

Expanded welfare benefits are not the answer. Women will not choose a career that culminates in being a welfare recipient.

I have several recommendations.

I am no expert on social security and look forward happily to never becoming one since it is not a direct concern of State government.

The approach of the Keys-Fraser bill seems to me the kind of approach you have to take to treat homemaking as a career with an economic future, and a future in retirement.

I think in addition we need some special benefits for the divorcees and the young widows, something to allow benefits to continue for a brief time while she gets on her feet, something in the nature that unemployment insurance provides for someone who has been employed outside the home.

[The prepared statement follows:]

STATEMENT OF MARY A. MARSHALL, MEMBER, VIRGINIA HOUSE OF DELEGATES

I represent Arlington in the General Assembly and I am Chairman of the Commission on the Needs of Elderly Virginians. I also have worked with the other women members of the Assembly on legislation protecting the economic status of the homemaker in inheritance, taxes, and divorce. It is these concerns that bring me here today. Homemakers are the largest occupational group in the country. I am one of them.

Young women now trust homemaking as a career less and less. They are afraid to stay home and take care of their children lest they be left alone and penniless in the future. They have seen what happens to their widowed or divorced mothers, aunts, and friends.

The widowed homemaker is not entitled to Social Security until she is sixty. Until she reaches that age she must support herself. The Employment Service tells us that it is extremely difficult for a regularly employed worker to find a new job after reaching the age of forty-five. You can imagine the problems of a woman over forty-five who has never worked or who has been out of the work force for years.

The younger widow receives Social Security benefits as long as she has children under eighteen. Then she joins the job hunt.

The divorced homemaker has the same benefits as a widow if her marriage has lasted twenty years. Otherwise she has nothing. No other pension plan requires twenty years on the job before the pension vests. The increasing divorce rate means there will be more and more homemakers with no skills and no Social Security benefits of their own or their husbands.

The woman who stays home to take care of her children and then goes to work will find that her nonearning years are averaged in with her earning years and that her benefits go down accordingly. She will have to work for five years before she is eligible for disability benefits.

The consequences of our policy toward homemakers are:

1. A tremendous increase in the demand for day care for children so that their mothers can work and

2. A large population of poverty-stricken widows and divorcees. Fifty per cent of single women over sixty are living at or below the poverty level.

A woman should be able to choose homemaking and care of children as her career. Freedom of choice is disappearing and women are working as a matter of necessity. Hence the demand for day care.

Expanded welfare benefits are not the answer. Women will not choose a career that culminates in being a welfare recipient.

I recommend that you:

1. Establish benefit rights for divorcees on the basis of the duration of the marriage;

2. Provide a period of benefits for the younger widow without children while she prepares for the job market and full benefits when she reaches fifty;

3. Exclude homemaker work years from averaging earning for benefit purposes;

4. Provide equal benefits to both spouses based on income regardless of which spouse has earned it.

You will have other witnesses who can give expert advice and direction in drafting and costing out necessary changes. I believe we must be willing to pay the extra cost in order to enable women who choose to stay home and care for their families to do so.

Mr. JACOBS. Thank you, Mrs. Marshall, for your contribution.

My wife and I are quasi-consituents of Joe Fisher also.

Mrs. Janover?

STATEMENT OF JEAN L. JANOVER

Mrs. JANOVER. I am going to summarize my testimony.

I request that the full testimony be put into the record.

Mr. JACOBS. Accepted.

Mrs. JANOVER. I am Mrs. Jean L. Janover, a volunteer and member of the Committee on Aging of the Community Service Society of New York.

I would like to introduce Dr. Charles O'Donnell, who is accompanying me, who is consultant to the Community Service Society of New York, professor of economics and dean of arts and science at Iona College in New Rochelle, N.Y.

The Community Service Society is a voluntary social agency that has worked to alleviate hardship and to improve conditions for the disadvantaged for more than 125 years.

Needless to say, the social security programs are of major interest to the Community Service Society.

We believe our recommendations improve the equity and adequacy of benefits so the program can better meet its obligations to society as beneficiaries, especially the middle class to whom it should provide confident expectation of predictable income, and particularly the elderly poor, of whom in 1975, 3,317,000 were living below the poverty level.

We believe our recommendations are responsible and responsive to the problems confronting both the social security program and its beneficiaries, and insofar as possible do not involve means testing as a condition of receipt of socially provided income.

In summary, we recommend the following:

1. That as a matter of principle there should be a contribution from general revenues to the financing of OASDI. A social insurance program confers real benefits on society by sharply reducing the numbers who otherwise would be dependent on other programs whose costs fall on the general taxpayer.

2. That the extent of general revenue financing should be clearly limited by providing, as a public policy, that the contribution of the general taxpayer should be restricted to some defined percentage of the total cost of the program but not exceed one-third of those costs.

3. That the contribution from the general revenues take the form of an earmarked surcharge on the Federal income tax.

4. That a part of the proposed general revenue contribution be used for the countercyclical financing of revenues, lost to the trust fund due to "excessively high" unemployment in accordance with the President's proposal.

5. That decoupling be enacted to provide automatically that prospective benefits grow in accordance with increases in wages and current benefits rise in accordance with benefits in the CPI.

6. That the administration's proposal for wage indexing and a new benefit formula to maintain current replacement ratios be enacted.

7. That compulsory universal coverage be enacted. Benefits from the social security role in preventing public dependency are enjoyed by all members of our society; for example, those in uncovered employment benefit from a system in which the general public is paying the employer's share.

8. The minimum PIA benefit be frozen at its current level but once awarded be increased by cost-of-living adjustments.

9. That PIA be increased to 12½ percent and the secondary dependent's benefit be set at 33½ percent of the new PIA.

10. That the retirement or earnings test be retained but the benefit withholding rate be modified so as to reduce the marginal tax rate.

11. We urge that the administration's proposal to increase and then eliminate the taxable wage limit for employers be rejected. This is discriminatory as between profit and nonprofit employers. Not being subject to corporate tax liability, nonprofit employers cannot in any way pass along this tax.

12. We urge that the administration's proposal to require a test of dependency for secondary benefits be rejected and the current requirement for men be removed from the law. Benefits now are awarded only if the individual is not entitled to a higher benefit in his or her own right. A dependency test is really a euphemism for another type of means testing.

Thank you for the opportunity to present our recommendations to the subcommittee.

[The prepared statement follows.]

STATEMENT OF JEAN L. JANOVER, MEMBER, COMMITTEE ON AGING, COMMUNITY SERVICE SOCIETY OF NEW YORK

I am Mrs. Jean L. Janover, member of the Committee on Aging of the Community Service Society of New York, a voluntary nonsectarian social agency that has worked to alleviate hardship and to improve conditions for the disadvantaged for more than 125 years. Needless to say the Social Security programs are of major interest at Community Service Society. The social insurance programs are recognized as the primary economic security instrument to prevent destitution when income from employment ceases due to the retirement, old age, death or disablement of the worker. We fully recognize the role Social Security benefits play in these circumstances . . . providing continuous basic income in an efficient, predictable and dignified way. We therefore join with all those urging Congress to take action to reestablish the fiscal integrity of the system and to guarantee continued benefits to the 33 million Americans now receiving them as well as to future generations.

FINANCING THE SYSTEM

As a social agency working with the urban poor, Community Service Society has given special attention to the problems of aging for more than 17 years. During that time we have served literally thousands of New York City's elderly, providing not only direct social services but financial assistance as well. These direct experiences with aged clients, many of whom were not poor before they were old, provide us with firsthand knowledge of the economic deprivation associated with advancing age. Analysis of the income resources of the aged indicate to us both the importance of Social Security benefits to them and the need to adjust the system. We are convinced that changes should be made to improve the adequacy and equity of the program to help prevent similar problems among future beneficiaries and to better meet current needs as well. Therefore, we will not confine our recommendations to simply restoring the system to actuarial balance but will also recommend other improvements for which we urge prompt Congressional action.

However, we urge that the first order of business for the Congress should be enactment of measures to restore the system's financial soundness and we commend the Administration for its prompt attention to this. While we are not in total agreement with the measures proposed by the President, we recognize that they would go far toward reestablishing the system's fiscal integrity over the short run and restoring the public's confidence in the system. But, there are other ways to accomplish these goals and improve the program as well.

Use of General Revenues

First, where the President somewhat timidly circumscribes the use of general revenues through a counter-cyclical financing mechanism to compensate the Social Security Trust Fund for payroll taxes lost due to excessive unemployment, Com-

munity Service Society believes that as a matter of principle there should be a permanent contribution from the general revenues to the financing of Social Security. The principle on which we rest the case for a contribution from the general revenues is simply that Old Age, Survivors, and Disability Insurance (OASDI) is a social insurance program that confers real benefits on society as a whole by sharply reducing the numbers of people who would otherwise be dependent on other public programs. Not only are the alternative public programs less socially desirable and administratively more costly, but, also, their cost falls on the general taxpayer. Thus it seems only fair that the general revenues should contribute toward the costs of the social insurance program that prevents this more costly dependence. And we would point out that even now there is an infusion of general revenues into the system. In addition, to the use of general revenues to support the benefits paid to the 200,000 persons 72 years of age and over who were blanketed into the system in 1968 and a few other small groups of beneficiaries, there are today two "concealed" general revenue subsidies of significance.

First, because the employer's share of the Social Security tax is treated as a business cost, the corporate income taxes otherwise payable are reduced. Hence the general taxpayer bears the cost of the corporation taxes that are foregone amounting to nearly 50 percent of the employer's share of the Social Security tax. Second the Earned Income Credit that is available to low income families means that the general taxpayer refunds all or part of the Social Security taxes paid by low income earners.

We believe that these "concealed" subsidies are more damaging to accountability than would be the frank admission that the general taxpayer is sharing in the costs in some specified proportion. Therefore, we recommend:

1. That as a matter of principle there should be a contribution from the general revenues to the financing of OASDI;
2. That the extent of general revenue financing should be clearly limited by providing as a public policy that the contribution of the general taxpayer should be restricted to some defined percentage of the total costs of the program, but not to exceed one-third of those costs;
3. That the contribution from general revenues should take the form of an earmarked surcharge on the federal personal income tax, thereby bringing home to the individual taxpayers the cost of Social Security;
4. That a part of the proposed general revenue contribution should be used for replenishment of revenues lost to the OASDI Trust Funds because of "excessively" high unemployment as proposed by the President.

Whether or not the Congress in its wisdom introduces general revenues into the system now, we thus support the President's proposal for counter-cyclical Fund replenishment. We believe that the Reserve Fund, because of the importance attached to it by the public, should have the extent of its responsibilities sharply defined and that the costs of excessively high unemployment to the system should be separated from its normal contingency function. We believe the proposal will go a good way toward restoring public confidence to the Social Security program.

Disadvantages of Increasing the Tax Rate or the Wage Base

Community Service Society does not want the Congress to think that it came lightly to its recommendation to use general revenues. Indeed, we came to it through prolonged study that in effect found general revenues to be the least undesirable method of raising the necessary revenue. To bring the system into balance involves a choice between reducing benefits, which we unalterably oppose, or raising more revenue. We find that the other options for increasing income, e.g., raising the contribution rate or the taxable limit or both, contain more disadvantages than the risk generally attributed to a general revenue contribution.

While we are not as convinced as the Administration that the tax rate has reached its limit, we believe that there are narrow limits to the increased funds that can be secured from increasing the wage and payroll taxes and raising the taxable limits. Both have serious disadvantages. The wage tax is both absolutely heavy and is regressive in character. In recognition of this the Earned Income Credit has already been adopted, which as already mentioned wholly or partially refunds the Social Security taxes paid by families with children and incomes under \$8000. While this somewhat negates the regressiveness of the tax, it has the disadvantage of weakening the contributory principle, to which we attach great importance, for it means in fact that low earners will not have contributed toward the cost of the benefits they will receive.

Furthermore, there is general agreement among economists that all or the major part of the OASDI tax paid by employers and not offset by reduced corporate taxes is passed on to wage earners through reduced wages or to consumers through higher prices. Even so, the tax is discriminatory as between different types of employers, depending on whether they are producing for profit or are nonprofit employers (e.g., state and local government employers, charitable organizations, etc.) or on whether the demand for their product is elastic or inelastic, or is one that lends itself to small incremental price changes or whether the industry is or is not labor-intensive, for these characteristics affect the ability to shift the tax. Increasing the tax rate would, perforce, increase this discrepancy and possibly lead to more nonprofit employers withdrawing from Social Security * * * a situation we consider highly undesirable.

Raising the taxable limit is admittedly a more desirable way of increasing revenues than raising the tax rate because it concentrates the additional burden on the higher paid earners. But raising the taxable ceiling in a wage-related system involves increasing the benefits of higher paid workers, thus offsetting some of the expected increase in revenues. The Administration's proposal to raise and ultimately eliminate the taxable limit for employers alone would avoid this by retaining a limit on the worker and thus his benefit claim.

However, we oppose the proposal to uncap the taxable limit for employers because such an increased tax burden is especially discriminatory as between profit and nonprofit employers such as state and local governments or voluntary agencies. Workers for nonprofit employers are an increasing proportion of all workers. An estimated 10 million employees of state and local governments and 3.6 million employees of nonprofit voluntary agencies are covered by OASDI. These two groups represent almost 15 percent of the Social Security contributors. Because they are not subject to corporate tax liability, nonprofit employers would be unable to shift part of the new burden on to the general revenues. Since their product as a rule is not saleable on the open market, they are unable to shift the burden in the same way as "for-profit" employers, that is, by raising prices. To the extent that state and local governments react by increasing their taxes to meet the higher OASDI costs, this would involve a regressive tax levy in view of the importance of sales and property taxes in the revenue resources of these agencies.

There is also the possibility that a heavy increase in the payroll tax burden would discourage business enterprise and investment, especially in periods of less than full employment. Even though much of the tax is ultimately shifted, the psychological and short run impact of the increased payroll taxes can not be disregarded.

In contrast, funds raised from the general revenues would be less regressive and tap property incomes as well as earnings. Not only would they be free of some of the disadvantages of wage and payroll taxes discussed above, but the use of general revenues in some defined proportion as we suggest could mitigate the current discriminatory effects of wage and payroll taxes.

Decoupling

We believe that the Administration is well-advised to confine its proposals (other than its "decoupling" plans) to dealing with the short run deficit. The reliability of predictions of either the economic or demographic conditions, let alone both, in the next century is so questionable and the estimates based on them so speculative that we believe it would be unwise to attempt policy decisions for so far into the future. However, it is clear that irrespective of the considerable fiscal impact that decoupling would have in the years after 2000, decoupling should be enacted now so that the replacement ratio is stabilized and changes in it occur only in accordance with deliberate Congressional action.

As stated in our proposal for the use of general revenues, Community Service Society is opposed to reducing benefits either as part of the solution to the short-range deficit problem or as a means of reducing the role of the system in partially replacing lost earnings. Therefore, we reject proposals that would have prospective benefits adjusted by price changes which would result in a progressive lowering of the replacement ratio. We support the Administration's proposal to correct the current over adjustment by providing that future benefits grow at the same rate as wages and once awarded grow in accordance with the increases in prices.

Although the impact of the current over indexing is not anticipated until after the turn of the century, further delay in correcting it simply compounds the

unwarranted advantages accruing to prospective beneficiaries and contributes to the projected long-term deficit.

Compulsory Universal Coverage

Our final recommendation for increasing revenues to the system is compulsory universal coverage. We propose this not only for the revenues to the system it would generate but on a principle of equity. That is, because of the social benefits conferred by the social insurance instrument, all workers should both contribute and benefit. We regard as totally indefensible, for instance, that federal employees are exempt from sharing the social burdens of Social Security while, as members of the society at large, they benefit from its role in preventing public dependency for large numbers of beneficiaries and themselves benefit from a generous retirement system for which the general taxpayer must pay the employer's share.

However, federal employees are not the only ones exempted. State and local governments and nonprofit charitable organizations are also exempted but with an option to participate if they so choose. What's more, these employers can also terminate participation unilaterally. These options are not, nor do we think they should be, available in private employment or to the self-employed who must contribute to the systems over their work lives. Since Social Security is the nation's major income security instrument, all workers regardless of the employing entity should both contribute and benefit from it. We urge that compulsory coverage be extended to include currently exempted and elective coverage groups.

BENEFITS IMPROVEMENTS

While the financial problems facing the system are of paramount importance for speedy legislative action, we do not believe the benefit side of the picture should be totally overshadowed by this concern. We believe that in addition to restoring the system's fiscal integrity, the system's function of providing minimally adequate income replacement must also be addressed. Our Committee on Aging grappled with this during a year long study of the system and its problems and is convinced that the program must continue to adjust its benefits to meet its appropriate role as our major income security program. We would point out that no real improvement to benefits has occurred since 1972. We fully acknowledge that the 1972 amendments, even after decoupling is accomplished, will result in better benefits for future retirees by virtue of the higher taxable wage base provisions contained in it and the automatic adjustments enacted. However, no real improvements have been made for those already receiving benefits and the improvements mentioned for future retirees will not really affect new retirees until sometime in the 1980's and later. We do not consider the automatic cost-of-living increases as anything more than the stay even measure they purport to be.

Failure to revise benefits has resulted in a reversal of the earlier progress of reducing the incidence of poverty among the aged. Following a slow but continuous decline in the extent of poverty among the elderly since 1970, the recently published report entitled "Characteristics of the Population Below the Poverty Level: 1975" shows that it is again rising. Between 1974 and 1975 the percentage of elderly living in poverty rose from 14.6 to 15.3 percent increasing the number of elderly in poverty from 3,085,000 to 3,317,000, and, thereby adding some 232,000 persons age 65 and over to the poverty rolls.

Wage Indexing

The first improvement we recommend supports the Administration's proposal for wage indexing. We support revision of the benefit formula so that the worker's initial benefit is computed on lifetime average indexed earnings to improve both the adequacy and the equity of the system. In principle, current law provides that benefits are based on averaged lifetime covered earnings. But this average is pulled down by the low level of earnings in general during the 1950's and 1960's and by the low levels of past legal limits on the amount of earnings which could be taxed and which, thus, could be counted for benefit determination. This adverse affect on the credited average monthly earnings will intensify as the calculation period is extended to 35 years, making earnings in earlier years increasingly less relevant to conditions at the time of retirement.

Indexing or adjusting wages to offset changes in wage levels from year to year would improve the adequacy of benefits by significantly enhancing the system's ability to have benefits serve as meaningful replacement of earnings, as we at Community Service Society believe they should.

Our second reason for supporting the wage indexing proposal is that it would also improve the equity of the system. At the present time two workers, both working for the same number of years with earnings that are the same percentage of average earnings, will receive different benefits according to the period in which their earnings occurred. The worker retiring in 1977 will receive a lower benefit than the worker retiring in 1987 because his average monthly earnings will be pulled down by the inclusion of a greater proportion of years of earnings secured when the average level of earnings was low and the taxable wage limit was also much lower.

The inequity is even more marked in the case of the old age retiree versus a younger worker disabled in his late 30's who claims benefits in a period when wages are rising. The average monthly earnings of the former will be lower, reflecting the inclusion of earnings in many past years in which earnings in general were lower; the latter will include in his average only the 10 or so most recent years when earnings in general were much higher. Wage indexing would somewhat reduce this discrepancy while retaining the concept of lifetime earnings as the calculation period.

Our Committee considered other proposals for the calculation period such as the best 10 years or the last 15 years and other combinations but rejected them because they would result in no significant gains for the low income worker and because of the cost consequences. We believe that average indexed lifetime earnings would be the best choice and recommend that the Administration's wage indexing proposal including the adoption of a new benefit formula to keep replacement rates at about existing levels be enacted.

Minimum Primary Insurance Amount (PIA)

We recommend that the minimum PIA be frozen at its current level, although once awarded, the minimum benefit should be subject to cost-of-living increases. We do not argue here that the minimum benefit is adequate, but that it is increasingly perversely directing its benefits (which are highly subsidized) to persons not dependent on them to meet their needs. The absence of universal coverage has created the situation wherein persons whose major work life is in uncovered employment with generous retirement programs (e.g., government employees), can "moonlight" in covered employment, or, upon retiring from their career job earn entitlement after relatively short periods of participation in covered employment. Hence, many through short and weak attachment in covered employment qualify for the minimum benefit. For such people the highly subsidized minimum benefit represents a windfall gain that was never intended. Furthermore, arguments for the minimum on social adequacy grounds are increasingly irrelevant as the proportion of "windfall" recipients to long-term low income workers as beneficiaries of minimum benefits continues to increase.

Since virtually all workers with substantial participation in covered employment, even always at the prevailing federal minimum wage, will claim a benefit more than twice as high as the minimum and even minimum wage earner over a shorter period will claim benefits in excess of the minimum, we believe the minimum benefit should be frozen and phased out.

Dependency Test

Community Service Society opposes the Administration's proposal to require a test of dependency on the spouse to determine eligibility for secondary benefits. We regard such a test unnecessary because dependent or secondary benefits are awarded only if the individual is not entitled to a higher benefit in his own right and additionally, like all benefits, are limited by the earnings test. Thus, a dependency test would, in our view, generate an unwarranted detailed investigation of personal circumstances and individual determinations of dependency that are incongruent with the general philosophy of social insurance programs. We urge, instead, that the court's mandate to treat men and women the same be accomplished by removing the test for men.

Increase PIA by 12½ percent

Because benefits are least adequate, despite long-term coverage and at least median earnings, for single workers and surviving dependent spouses whose benefits are equal to 100 percent of the deceased's PIA, Community Service Society urges adoption by the Congress of the proposal of former Social Security Commissioner Robert Ball that the worker's primary benefit insurance amount be raised by 12½ percent and the dependent spouse's benefit be reduced from 50 percent of that PIA to 33½ percent of it.

Couples fare much better under the system in terms of receiving benefits sufficient to keep them out of poverty than do single persons whether never married or because of the death of the spouse. This is because a couple claims two benefits—either because each has a benefit in his own right or because one is entitled to a secondary benefit equal to 50 percent of the worker's PIA. In 1975, 15.3 percent of the aged were counted as poor by the poverty index measure; but the frequency of poverty among the single aged was nearly four times that of aged couples—31 to 8 percent, according to the report previously cited on the "Characteristics of the Population Below the Poverty Line: 1975." It should be kept in mind, however, that when one of the couple dies, the surviving spouse will receive only one benefit thus becoming a single beneficiary with the increased risk of falling below the poverty level. Since nearly all couples will eventually revert to a single benefit through the death of one of the partners, it is important that special attention be given to improving the benefit level of single beneficiaries. It should be noted that for couples in which the spouse receives the 50-percent secondary benefit, the reduction to 33½ percent would be offset by the 12½-percent increase to the worker's PIA. Thus, any dollar loss in current income to couples would be avoided, and the surviving spouse of the couple would receive a higher single benefit.

In addition to increasing the adequacy of benefits for single workers and surviving spouses, the recommendation also improves equity as between single workers and couples and as between couples where both members earn coverage and those with only one earner. At the present time, a couple where both partners work is discriminated against as compared to a couple with the same total earnings, but with only one earner. In the case of a couple where each member had average annual covered earnings of \$4,000, each would receive a monthly benefit of \$263.46 for a total of \$526.92 for their combined \$8,000 of average covered earnings at the beginning of 1977. However, in the case of a couple where one spouse worked and had average earnings of \$8,000, the worker would receive a retiree's benefit of \$427.86 and the spouse could receive a spouse's benefit of \$213.92 (one-half of the worker's PIA) for a total of \$641.79 or \$114.87 (22 percent more than the other couple, even though both couples had the same combined earnings. Reducing the spouse's benefit to 33½ percent, while increasing the PIA by 12.5 percent, would considerably reduce this discrepancy.

This change would also go some way toward meeting the objections of some married women who work but find on retirement that their benefits are no greater than they could have claimed as the spouse of a beneficiary. In these instances, current law provides that a retired married woman can claim either her own earned benefit or 50 percent of her husband's, whichever is larger and, when widowed receive 100 percent of her husband's benefit. Raising the worker's PIA while reducing the spouse's would reduce the instances in which there is no advantage gained by the working wife who has paid into the system.

MODIFICATION OF THE RETIREMENT OR EARNINGS TEST

Community Service Society supports retention of the earnings test. We think it is an important principle of social insurance and view it as a desirable alternative to the absolute or total cessation of earnings as embodied in the original act. The purpose of the social insurance program is to partially replace earnings lost due to disengagement from employment because of old age disability or the death of the income earner. The earnings limit is a test of the risk insured, loss of earnings and should be retained.

Not only is the cost of removing the test very expensive to the system but it also would divert most of the added expense to persons least in need and would not benefit those most in need of additional benefits. Estimated to cost between six and seven billion dollars, removal of the earnings limit would not help low benefit recipients unable to work or unable to find jobs. We believe that an expenditure of that size would be better spent for direct benefit improvements.

However, we do consider the current benefit withholding rate of \$1.00 for every \$2.00 above the exempt level (amounting to a marginal tax rate of 50 percent) as constituting a disincentive for older workers who want or need to work beyond the normal retirement age. Therefore we recommend modification of the benefit withholding rate to \$1.00 for every \$3.00 of earnings between the exempt level and twice that level and \$1.00 for every \$2.00 for earnings over twice the exempt amount as recommended by the most recent Federal Advisory Council on Social Security.

Cost Estimates for Community Service Society's Recommendations

It is difficult to estimate the cost of the proposals we have recommended since OASDI cost estimates are based on long-range projections, which we believe are highly speculative. Furthermore, the introduction of general revenues in some specified proportion as we propose substantially changes the financial aspects of the program thus making estimates based on taxable payroll irrelevant.

We estimate, assuming "decoupling" is enacted, that the net effect of our proposals for revising OASDI will increase the long run costs of the program by 1.5 percent to 2.0 percent of taxable payroll, thus adding to the existing deficit. This is now running at an estimated 4.46 percent of payrolls (assuming "decoupling") for the 75 year period ending in 2051 and at 2.06 percent of payroll through the rest of this century.

However, it should be noted that some of our proposals, such as universal coverage and freezing the minimum PIA, either generate new income or reduce spending thus offsetting to some degree the cost of the proposed benefit improvements.

We reiterate our belief that improvement in benefits are necessary now despite the proper concern over the projected deficits of the current system. We believe our recommendations to improve the equity and adequacy of benefits so that the program can better meet its obligations to society, its beneficiaries and to the elderly poor in particular, are responsible and responsive to the problems confronting both the Social Security program and its beneficiaries.

In summary, we recommend:

1. That as a matter of principle there should be a contribution from general revenues to the financing of OASDI.

2. That the extent of general revenue financing should be clearly limited by providing as a public policy that the contribution of the general taxpayer should be restricted to some defined percentage of the total costs of the program but not exceed one-third.

3. That the contribution from the general revenues take the form of an earmarked surcharge on the federal personal income tax.

4. That a part of the proposed general revenue contribution be used for the counter-cyclical financing of revenues lost to the trust fund due to "excessively high" unemployment in accordance with the President's proposal.

5. That "decoupling" be enacted to provide automatically that prospective benefits grow in accordance with increases in wages and current benefits rise in accordance with increases in the Consumer Price Index.

6. That the Administration's proposal for wage indexing and a new benefit formula to maintain current replacement ratios be enacted.

7. That Compulsory Universal Coverage be enacted.

8. That the minimum PIA benefit be frozen as its current level but once awarded be increased by cost-of-living adjustments.

9. That the PIA be increased 12½ percent and the secondary dependent's benefit be set at 33½ percent of the new PIA.

10. That the retirement or earnings test be retained but the benefit withholding rate be modified so as to reduce the marginal tax rate.

11. That the Administration's proposal to increase and then eliminate the taxable wage limit for employers be rejected.

12. That the Administration's proposal to require a test of dependency for secondary benefits be rejected and the current requirement for men be removed from the law.

Thank you for the opportunity to present our recommendations to the Subcommittee.

Mr. JACOBS. Thank you, Mrs. Janover.

Do you have a statement, sir?

STATEMENT OF CHARLES O'DONNELL

Dr. O'DONNELL. Yes; just one point.

There are several comments I would like to make. In the testimony, there is some more detail. We believe that there should be a benefit improvement now. We realize in the last couple of years that there have

been improvements due to the cost-of-living increase but there has been no real increase in benefits over and above this amount.

So, the Community Services Society adopts Robert Ball's proposal that the benefits be increased by 12.5 percent for the primary insurance amounts and the spouses' benefits be cut from 50 to 33½ percent.

We have the best revenue figures we could get at the current time in the statement.

The reason for this recommendation is by improving the PIA by 12.5 percent we believe that this would be most beneficial to those most in need.

The widow who, when her husband dies, is the person who has the highest incidence of poverty—approximately 31 percent for all elderly widows today are living in poverty.

By increasing the PIA by 12.5 percent, this person receives a higher benefit and therefore the adequacy of the system would be improved.

In the testimony we also argue why the OASDI system would be more equitable by improving the PIA benefits by 12.5 percent.

There is one other comment I would like to make in response to some statements made earlier today that you had responded to.

One of the speakers in discussing the tax aspects of the social security system indicated she felt that it placed a heavy burden upon the younger worker.

I think your comment that the old person provided for the public education of the younger workers is an important response to this. There is another aspect that should be mentioned. For many young workers social security is really such an important part of their life insurance program.

One recent study indicated that the life insurance aspect of social security is approximately equal to \$150,000 of life insurance for a man and wife with two children.

The disability aspects of it are estimated to be between \$6,000 to \$11,000, depending on the number of children in the family and the earnings record of the individual.

I think it cannot be stressed often enough in addition to the retirement aspects of social security, there are also the survivors aspects and the disability aspects of it.

I find too many young people never think about this and only think about social security as a retirement program.

I think more emphasis and more education should be given to this. I believe that the debate today and the arguments today about the overburdening of the young are overstated because we must realize that the working generation and the people who have retired have provided us with basic resources and the basic economy that we have.

They have sacrificed their dollars to provide the educational background we needed and I think this must be put in proper perspective.

Mr. JACOBS. I think that is very well stated, Dr. O'Donnell. I wonder how many people really stop to think that really our social security system is a little bit like the Waltons, the older folks are still at the table, still contributing in such way as they can and chances are they helped build the table and acquire the ground and all the rest.

So, some people have suggested abolishing the social security system and the good sense of the American public has made that hazardous,

and therefore, I think the faith in the democracy in this country has been vindicated in that respect as well as in many other respects and I suppose it should be observed as far as a buy from the Federal Government I don't know where anybody gets a much better buy from the Federal Government unless you enjoyed the Vietnam war.

I am particularly grateful for your testimony because I am a former member of my State legislature as well.

I can't think of any public service that is less heralded than service in the State legislature.

Mrs. MARSHALL. May I make one additional point?

They are mentioning the problem of additional employers contribution, when unemployment rises to a certain amount the counter-proposal, which would place a burden on them, would also put a very big burden on State and local governments at a time when they will not be in a good position to take it on.

If the employers tax is uncapped, it would be a tremendous burden on State and local governments, because the only way they could take that tax is increase State and local taxes which are generally regressive in nature, or the other possibility is it might encourage more State and local governments to unilaterally put on a social security system.

Mr. JACOBS. At that point we are running out of time and space.

I am told we are now encroaching on other committee activities. May I ask the panel your opinions about universal coverage, that is to say mandatory coverage in the case of State governments and in the case of the Federal Government?

Mrs. MARSHALL. Yes; I would be very enthusiastically supportive of that.

I think the Federal Government ought to come under it, too, and I have as you can imagine a number of friends who work for the Federal Government.

The lack of portability is one of the worst rigidities we have in the economic system.

People simply cannot move from job to job and the more portability, the more universal system we can get, the better we will be individually and as a group.

Mr. JACOBS. Mrs. Janover.

Mrs. JANOVER. We seem to be the only social agency that is testifying today, and I want to stress a very important point we make in our testimony.

Everybody should be covered. We are confronted every day by people who have to depend on various—I don't even like to use the word welfare—various forms of transfer payments, people who have worked hard all their lives, who have put into the system and suddenly discover they are poor. They are legislated old at 65 and they are legislated poor when they are legislated old.

Everybody really benefits from the fact that people have an income by right. I think that is a philosophical point we make very clearly in our testimony and I want to reiterate it here.

Dr. O'DONNELL. In our testimony we make a statement that I think is very well put. We regard as totally indefensible, for instance, that Federal employees are exempt from sharing the social burdens of social security while as members of society at large they benefit from its role in preventing public dependency for a large number of beneficiaries

and they themselves benefit from a generous retirement system for which the general taxpayer must pay their employers' share.

Mr. JACOBS. Thank you all very much.

[Additional material submitted by Dr. O'Donnell follows:]

DETAILED ESTIMATES OF RECOMMENDATIONS

For a more detailed breakdown of the estimates of our recommendations, we would like to provide the following:

Raising the PIA by 12½ percent and reducing the spouse's benefit from a half to a third would raise costs by an estimated 1.64 percent of taxable payroll (assuming a decoupling system). This is based on the assumptions of the 1975 Trustee's Report. A more current estimate was not available from the actuaries at the Social Security Administration. They noted that the changed assumptions used in the 1976 Trustee Report " * * * resulted in significantly higher projected costs. Thus, it is probable that a current estimate on the cost of the proposal (on the basis of the later assumptions) would show a similar increase in magnitude." (Letter from Social Security Administration, February 9, 1977.)

Since indexing of earnings is proposed as part of the decoupling proposal, no cost estimate is needed here. In 1975, the Federal Advisory Council estimated that freezing the minimum PIA would reduce long term costs by an estimated 0.07 percent of taxable payroll.

Elimination of the dependency test would cost an estimated 0.1 percent of long term payroll.

Decoupling would reduce the long-term deficit from 8.2 to 4.46 percent (a reduction of 3.74 percent of taxable payroll).

Universal coverage would yield an increased income of 0.32 percent of taxable payroll.

The net effect of changing the retirement test as recommended but eliminating the monthly test has been estimated by the Federal Advisory Council as costing 0.02 percent of long-term payroll.

Because current estimates were not available, we used the best information that could be obtained. Disregarding the decoupling recommendation, the increased costs are 1.76 percent of taxable payroll offset by increased income of 0.39 percent of taxable payroll for a net effect of an increase of 1.37 percent. Since there have been revisions of the long-range estimates (which we regard as highly speculative) we have assumed that the net effect would be between 1.5 to 2.0 percent of taxable payroll. Of course, our recommendation for the use of general revenue would make these estimates irrelevant since it would change the funding basis of Social Security.

Mr. JACOBS. Mr. and Mrs. Robert W. Reilly of New Haven. Are they here?

We shall reconvene at 2 p.m. in room H-208, the Capitol.

[Whereupon, at 1:05 p.m., the subcommittee recessed to reconvene at 2 p.m. in room H-208, the Capitol.]

AFTERNOON SESSION

Mr. PICKLE [presiding]. The subcommittee will come to order.

Mr. Jacobs has been chairing the subcommittee yesterday and again this morning, and by agreement with him we have continued on this afternoon. He may burst in the door at any minute, but we have an understanding that we are going to proceed.

So in anticipation of his arrival and in order to save time, we will go ahead.

As I understand it, the next witness who is scheduled to be heard now is Betty Duskin, director of research of the National Council of Senior Citizens.

We would be pleased to recognize you at this time. I notice you have a prepared statement of some length.

**STATEMENT OF BETTY DUSKIN, DIRECTOR OF RESEARCH,
NATIONAL COUNCIL OF SENIOR CITIZENS**

Ms. DUSKIN. I will attempt to summarize.

Mr. PICKLE. Without objection, we will include your entire statement in the record. We will be pleased to hear from you for any summary points you want to make on that statement.

Ms. DUSKIN. I am Betty Duskin, director of research, National Council of Senior Citizens. The national council is a nonprofit, nonpartisan organization of more than 3,800 older people's clubs in all 50 States, representing over 3 million members.

At our recent legislative conference, which was attended by thousands of elected delegates from senior citizens' clubs across the Nation, members of the National Council of Senior Citizens asked the leadership of the council to inform Congress that the elderly constituency which we represent stands solidly behind the President's social security financing proposals. Our members urge you to restore public confidence in the social security system by enacting the administration's constructive and practical financing remedies and to do so as soon as possible.

For the past several years, senior citizens have been bombarded by alarms and scare stories to the effect that our social security system was not soundly financed. Some critics went so far as to proclaim that in the next few years the system would either go broke or have to reduce benefits. However, we know that the Congress is not going to break faith with people by permitting their social security benefits to be jeopardized.

As the committee is aware, the nature of the financing difficulties is properly separated into two distinct aspects: The first involves a short-run cyclical deficit, and the second relates to the forecast of a long-run imbalance, part of which is structural in character.

I won't go into detail. I will leave that for testimony in the record. However, I would like to discuss to some extent the long-run problem which is a matter of two unrelated difficulties. One is a technical but easily correctable error in the automatic cost-of-living adjustment, which under some circumstances may unintentionally overcompensate retirees in future years.

The second problem, and perhaps the more important, arises from anticipated demographic changes early in the 21st century. The projected changes indicate that the retirement age population will be much larger due to the baby boom of the 1940's and 1950's, while the working age population will not grow similarly if the lowered birthrates of recent years continue into the future.

Assuming that there are no adjustments in labor force participation or no unexpected changes in birthrates, this could mean that proportionately fewer workers will be required to support a relatively larger retired population than is currently the case.

But the social security system is not the problem, it is the answer. Those persons born during this baby boom period will be with us early in the next century and they will be in need of a system of income maintenance when they reach retirement age. Obviously, though it sometimes seems to be overlooked, they would be here with their needs even if we did not have a social security system.

It is, therefore, of crucial importance that any changes to this system be carefully devised with full knowledge and understanding of the intent and functioning of the program.

The National Council of Senior Citizens feels that the President's financing proposals fulfill these criteria. The proposals operate within the existing benefit structure, they are philosophically consistent with the nature and the intent of the program, they are equitable, and they are appropriately cautious and flexible.

There is also wisdom in providing for the financial integrity of the social security system up through the turn of the century which the President's proposals do, but in not attempting to remove the entirety of the forecast long-run, 75-year deficit—although the estimated residual is modest. The reasons for this are twofold: The first concerns the imperfect knowledge with which forecasts are made and, therefore, the imperfect description of the nature and size of the problem. We cannot and should not make policy that attempts to fully adjust a problem in the distant future that is only dimly perceived in the present.

Second, the understanding is implicit that all of the difficulties that are conventionally ascribed to the social security system may not be properly specified in this context. They are problems of society-at-large, and some may be better resolved outside of the social security system. I shall come back to this point again later.

I will not go through the specifics of the President's proposals. I assume the committee is intimately familiar with them. However, the one proposal which does address the long-range deficit and which corrects the unintended technical error in the cost-of-living formula, the decoupling problem, is of particular concern to us and perhaps among the most important of the proposals that the President has set forth.

The administration has proposed a wage-indexed mechanism for the calculation of which would stabilize replacement rates. This is among the most important and one which the National Council of Senior Council of Senior Citizens most strongly endorses.

There is no disagreement over the fact that the technical error must be corrected. Under the present formulation, replacement rates—that is, the proportion of previous earnings replaced—may rise over time if price increases dominate wage increases, and they may decline over time if wage increases dominate price increases. Clearly, replacement rates should be a function of deliberate policy and not an accident of outside forces.

However, decoupling the system requires that an explicit policy decision be made regarding the long-term level of replacement rates. If retirees are to maintain not only the purchasing power of the benefits, but also share in rising productivity over time and thus maintain their relative position in the income distribution, then the adjustment should be made on the basis of increases in wage rates.

If the system were to be indexed solely on the basis of price increases, as recommended in the Hsiao report, the replacement rates would decline because of the progressive nature of the benefit structure, and even under conditions of constant purchasing power, retirees would be relatively worse off than they are today. Since a person's well-being is intimately connected with his economic status rela-

tive to others, the National Council strongly favors the wage-indexing approach.

Moreover, those who support the recommendations of the Hsaio report are jeopardizing a primary goal of social insurance: Adequacy in maintaining not only a minimum level of subsistence, but more importantly, adequacy in maintaining a customary standard of living achieved through one's working life. Although, for many the program falls short of this ideal, further deliberalization by instituting declining replacement rates is inimical to the best interests of society.

First, it would do violence to the program that is meant to address the problems associated with loss of income; second, it would shift the burden of society as a whole to the dependent population itself; third, the working individual would be justifiably uncertain of what level of adequacy in retirement was obligated to him; and, fourth, as a result the political acceptability of the payroll tax at current levels would be jeopardized.

We, therefore, strongly urge that Congress not overreact to anticipated demographic changes by attempting to address this difficulty and the independent problem of correction of the technical error by the same policy prescription. Attempts to serve two goals by one policy instrument may only ill-serve both. We, therefore, respectfully urge that the Congress support the "decoupling" proposal as set forth by the Carter administration.

Another administration proposal, and one which appears to have generated much controversy, is the recommendation to infuse counter-cyclical general revenues into the trust funds in the amount lost when unemployment exceeds 6 percent for the period 1975 through 1978, effective as of 1978 through 1982.

Among the concerns that are voiced, two appear to be rather paramount. The first argument claims that the entitlement principle will be eroded, while the second argument is usually put in terms of a question: Where are we going to get the money? Both concerns deserve careful answers.

In regard to the entitlement principle, which I, too, want to preserve, looking at the experience of other Western industrial nations is helpful.

I will not go into the details. Let me just say that with one single exception they all do use general revenues and in no case has the entitlement principle been jeopardized in any way.

The payroll tax is, of course, the most important form of financing in almost every country just as in ours, and we seem to be now considering proposals which were considered some time ago in other countries and have been successfully enacted. They should present no difficulties to us.

But from a more positive perspective there is every reason to actively support the use of general revenues as a part of the system.

The social security system represents a balance between two goals: First, social adequacy, and, second, individual equity. Contributions into the system support three elements consistent with the overall goals:

First. Future security for self and spouse when retirement is likely to occur.

Second. Future security for self, spouse, and other dependents should the unfortunate event of disability or premature death of the family breadwinner occur.

Third. Adequate security for less fortunate members of society who have low earnings histories, irregular employment, or become disabled or who die leaving dependents.

There appears to be no justifiable reason why anyone should be excused from supporting the third element. And, our most progressive form of taxation—the income tax, which is the basis of general revenues—is the fairest way to support the interests of society as a whole.

In addition, a moment's reflection may be sufficient to convince anyone that the payroll tax relieves general revenues of the "welfare" burden that it would otherwise be called upon to support. Why, then, cannot general revenues be called upon when the payroll tax has reached its socially desirable limit? What is sauce for the goose is sauce for the gander.

The second reservation that I mentioned before was the concern over where we are going to get the money—general revenues in this case. Yet this is the usual question confronted by every program. If the elderly, the disabled, and their dependents or survivors were not lifted out of poverty by social security, where would the money come from to sustain them? Certainly we would not turn our backs on them. Therefore, the "where would we get the money" criticism merely begs the issue.

The issue is there regardless of what decisions we make in regard to social security.

The case for general revenues—even on a permanent basis—is clear to the National Council of Senior Citizens. The case for general revenues was recognized in the law from 1944 to 1950 when language existed authorizing general revenues on an as-needed basis. Yet the President's proposal is far more modest. It requires only sufficient general revenues on a one-time basis to make up for the loss of contributions to the trust funds only from 1975 through 1978. The cautious and flexible nature of the general revenue proposal should offend no one.

Another proposal of the administration involves phasing in removal of the ceiling on the wage base subject to the payroll tax for employers. Not surprisingly, the business community has voiced loud objections to this approach. Yet I am surprised that I did not hear similar objections when the previous administration offered a proposal to raise the tax rate on all covered wages.

It seems to me that businessmen, in this case, are not aware of what is in their own best interest. The administration has been careful to point out that this approach actually costs employers less than conventional social security financing would cost.

At the present time, the full wages of 85 percent of workers in covered employment is subject to the payroll tax; only 15 percent of the covered work force would impose an extra payroll tax liability on employers. And I am told by the Social Security Administration that there is no evidence that these higher wages are heavily concentrated in certain sectors. This means that the extra payroll tax liability would be shared and will have far less financial impact on individual businesses than the alternative of an across-the-board tax rate increase as proposed by the previous administration.

Again, the experience of other industrial nations may serve as a guide. Many foreign systems have covered shares paid with the employers contributing a larger share than employees. This does not represent a basic departure from social insurance principles since there is no magic in an equal division of shares.

To the social security system itself, this approach has many advantages. It does not impose any further future liabilities on the system and it avoids regressive taxation of lower and middle income workers.

This proposal, in particular, is indicative of the care the administration has taken to assure that: First, no sector of the economy and no individual will be unduly impacted by the financing needs of the system, and second, there is movement in the direction of more progressive financing.

I will not go through the remainder of the administration's proposals. They are in the testimony. I feel they are far less controversial than the ones I have discussed.

There are one or two other issues that I feel are also of importance, although not part of the financing proposals. Among the other issues I would like to address are the retirement test for social security and proposals relating to semiannual cost-of-living adjustments and construction of a consumer price index representing the purchasing patterns of the elderly.

The controversy over the retirement test in social security has again become prominent. The National Council of Senior Citizens is unalterably opposed to abolishing the retirement test on the ground that to do so would be financially irresponsible and severely inequitable to most beneficiaries. Since this is not a universally held position, an indepth explanation is probably in order.

I would, therefore, like to submit for this purpose a booklet entitled "The Retirement Test in Social Security," which was published by the national council in May of this year. It was updated in May. It had appeared previously. It was authored by Nelson Cruikshank, then president of the national council.

Mr. PICKLE. We will accept your pamphlet and while it won't be printed specifically as a part of the record, it will be made a part of the overall report. It will be available for anyone who wants to refer to it.

Ms. DUSKIN. I appreciate that. Thank you.

Now, in regard to the CPI for the elderly and granting semiannual cost-of-living adjustments, we are fully in support of the proposals that are reflected in the two bills, H.R. 1539 and H.R. 1541, and identical bills as introduced by Representative Traxler, of Michigan.

The present system unfortunately provides adjustments that are too little and too late. In conclusion, I would like to impart to this committee the words of one of your own eminent colleagues in the Senate, Senator Hubert H. Humphrey. He said and I quote, "A society may be judged by how it treats three groups in its population: Those in the dawn of life, its young; those in the twilight of life, its elderly; and those in the shadows of life, its disabled."

Thus, the decisions made today may be the basis on which our society is judged tomorrow. I thank you.

[The prepared statement follows:]

STATEMENT BY BETTY DUSKIN, DIRECTOR OF RESEARCH, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. Chairman, members of the Committee, my name is Betty Duskin. I am Director of Research of the National Council of Senior Citizens.

The National Council is a nonprofit, nonpartisan organization of more than 3,800 older people's clubs in all 50 states, representing over three million members.

I deeply appreciate the opportunity to comment on the Administration's proposals for strengthening the financial structure of the social security system, the most successful social program in the history of our nation.

At our recent Legislative Conference, which was attended by thousands of elected delegates from senior citizens' clubs across the nation, members of the National Council of Senior Citizens asked the leadership of the Council to inform Congress that the elderly constituency which we represent stands solidly behind the President's social security financing proposals. Our members urge you to restore public confidence in the social security system by enacting the Administration's constructive and practical financing remedies and to do so as soon as possible.

For the past several years, senior citizens have been bombarded by alarms and scare stories to the effect that our social security system was not soundly financed. Some critics went so far as to proclaim that in the next few years, the system would either go broke or have to reduce benefits. However, we know that the Congress is not going to break faith with people by permitting their social security benefits to be jeopardized.

As the Committee is aware, the nature of the financing difficulties is properly separated into two distinct aspects: The first involves a short-run cyclical deficit, and the second relates to the forecast of a long-run imbalance, part of which is structural in character.

The reasons for the short-run problem are the simultaneous high unemployment and the high inflation rates of the last several years. High unemployment causes total dollar wages to fall, and this causes a decline in contributions to the system. Inflation, on the other hand, causes total benefit outlays to rise, since benefits are automatically adjusted upwards as the cost of living rises. Unemployment also forces many workers to accept early retirement at reduced benefits. A great many of them would prefer to continue working. While the reduction in their benefits spread over time means no actuarial loss to the system, this present retirement status is reflected in the short-run outflow of funds. Thus, the short-run problem cannot be blamed on the social security system, but on the malfunctioning economy. Indeed, it is in large measure a remedy, both for the economy and for older people caught in the squeeze between unemployment and inflation.

The long-run problem is a result of two unrelated difficulties. One is a technical, but easily correctable error in the automatic cost-of-living adjustment which, under some circumstances, may unintentionally overcompensate retirees in future years.

The second problem arises from anticipated demographic changes early in the 21st century. The projected changes indicate that the retirement age population will be much larger due to the baby boom of the late 40's and 50's, while the working age population will not grow similarly if the lowered birth rates of recent years continue into the future. Assuming that there are no adjustments in labor force participation or no unexpected changes in birth rates, this could mean that proportionately fewer workers will be required to support a relatively larger retired population than is currently the case. Given all the uncertain guesses which prophets use to foretell the future, the anticipated problems may be exaggerated. But again, the social security system is not the problem; it is the answer! Those persons born during this baby boom period will be with us early in the next century and they will be in need of a system of income maintenance when they reach retirement age. Obviously, though it sometimes seems to be overlooked, they would be here with their needs even if we did not have a social security system.

Clearly, the underlying causes of the current and projected financial difficulties are economic, demographic and technical in nature—salted and peppered with a large amount of speculation. It is important to understand that none reflects on the inherent merit of the social insurance principle, or on the inherent soundness of the social security system. The problems of short-run deficits and the technical flaw in the automatic provisions are readily correctable. The problem of the speculated rise in the ratio of retirees to labor force participants—if it

can be called a problem at all—is not unique to the social security program; it confronts any society which protects its elderly, its disabled, and its dependent survivors against economic insecurity.

Recognition of the causes of the financial problems of the social security system presents strong arguments—not for the weakness of the system, but for its strength.

First, it acts as an offset to recession by generating those same deficits for which it is criticized.

Second, rather than suggesting that the system will be subjected to alarming difficulties in the 21st century, the growth in size of the older population suggests that the social security system is destined to play an even greater role in the future than it has in the past.

It is, therefore, of crucial importance that any changes to this system be carefully devised with full knowledge and understanding of the intent and functioning of the program.

The National Council of Senior Citizens feels that the President's financing proposals operate within the existing benefit structure; they are philosophically consistent with the nature and intent of the program; they are equitable; and they are appropriately cautious and flexible.

There is also wisdom inherent in providing for the financial integrity of the social security system up through the turn of the century which the President's proposals do, but in not attempting to remove the entirety of the forecast long-run, 75-year deficit—although the estimated residual deficit is modest. The reasons for this are twofold: the first, Mr. Chairman, concerns the imperfect knowledge with which forecasts are made and therefore the imperfect description of the nature and size of the problem. We cannot and should not make policy that attempts to fully adjust a problem in the distant future that is only dimly perceived in the present.

Second, the understanding is implicit that all of the difficulties that are conventionally ascribed to the social security system may not be properly specified in this context. They are problems of society at large, and some may be better resolved outside of the social security system. I shall come back to this point again.

THE ADMINISTRATION'S FINANCING PROPOSALS

As this Committee is aware, the proposals which address the short-range and mid-range problems include: (1) infusing counter-cyclical general revenues when unemployment exceeds 6 per cent, effective 1978 to 1982, applied to the short-fall of 1975 to 1978; (2) phasing-in removal of the ceiling on the wage base subject to the payroll tax for employers; (3) raising the taxable wage base for employees in four steps of \$600 each above the automatic raise in the taxable wage base; (4) shifting a portion of the HI rate to OASDI beginning in 1978; (5) raising the contribution rate for the self-employed to its intended level of one and one-half times the employee rate; (6) instituting a symmetric eligibility test for dependents' benefits, and (7) moving up the tax rate increase of one per cent each on employers and employees scheduled for the year 2011, one quarter per cent each to be implemented in 1985 and the remainder in 1990.

The proposal which addresses the long-range deficit concerns correcting an unintended technical error in the cost-of-living adjustment formula which involves "decoupling" the benefit calculation at the time of retirement from the post-retirement cost-of-living benefit adjustment. The Administration has proposed a wage indexed mechanism for the calculation of benefits at the time of retirement which would stabilize replacement rates. This is among the most important proposals which this Committee has been asked to consider, and one which the National Council of Senior Citizens most strongly endorses.

"DECOUPLING"

There is no disagreement over the fact that the technical error must be corrected. Under the present formulation, replacement rates—that is the proportion of previous earnings replaced—may rise over time if price increases dominate wage increases, and they may decline over time if wage increases dominate price increases. Clearly, replacement rates should be a function of deliberate policy and not an accident of outside forces.

However, decoupling the system requires that an explicit policy decision be made regarding the long-term level of replacement rates. If retirees are to main-

tain not only the purchasing power of the benefits, but also share in rising productivity overtime and thus maintain their relative position in the income distribution, then the adjustment should be made on the basis of increases in wage rates. If the system were to be indexed solely on the basis of price increases, as recommended in the Hsaio Report, the replacement rates would decline because of the progressive nature of the benefit structure, and even under conditions of constant purchasing power, retirees would be relatively worse off than they are today. Since a person's well-being is intimately connected with his economic status relative to others, the National Council strongly favors the wage indexing approach as represented in the Bill offered by a distinguished member of this Committee, Senator Bentsen.

Moreover, those who support the recommendations of the Hsaio Report are jeopardizing a primary goal of Social Insurance: adequacy in maintaining not only a minimum level of subsistence but more importantly, adequacy in maintaining a customary standard of living achieved during one's working life. Although, for many the program falls short of this ideal, further deliberalization by instituting declining replacement rates is inimical to the best interests of society. First, it would do violence to the program meant to address the problems associated with loss of income; second, it would shift the burden of society as a whole to the dependent population itself; third, the working individual would be justifiably uncertain of what level of adequacy in retirement was obligated to him; and fourth, as a result, the political acceptability of the payroll tax at current levels would be jeopardized.

Again, I would like to reiterate several points made earlier: the changing demographic structure of our population indicates that the social security system will be even more important in future years, not less important; all the problems of society at large need not be resolved solely in the context of the social security system. Deliberalization of the benefit structure violates both of these principles.

We, therefore, strongly urge that Congress not overreact to anticipated demographic changes by attempting to address this difficulty and the independent problem of correction of the technical error by the same policy prescription. Attempts to serve two goals by one policy instrument may only ill-serve both. We, therefore, respectfully urge that the Congress support the "decoupling" proposal as set forth by the Carter Administration.

Counter-Cyclical General Revenues

Another Administration proposal, and one which appears to have generated much controversy, is the recommendation to infuse counter-cyclical general revenues into the Trust Funds in the amount lost when unemployment exceeds six per cent for the period 1975 through 1978, effective as of 1978 through 1982. Among the concerns voiced, two appear to be paramount. The first argument claims that the entitlement principle will be eroded, while the second argument is usually put in terms of a question: Where are we going to get the money? Both concerns deserve careful answers.

In regard to the entitlement principle, which I, too, want to preserve, looking at the experience of other western industrial nations is helpful. The social security systems of other industrial nations are far older than ours, and the debate over financing alternatives in the light of economic and demographic changes which is now so prominent in the United States, occurred much earlier in most other nations. (This may wound our pride in our foresight; yet, it is fair testimony to how quickly we must get on with the business of restoring the financial integrity of our system.)

Although the payroll tax is by far the most important means of financing in all industrial nations, every country—with the single exception of France—uses general revenues in some form to finance their social security systems. Some use a specific percentage formula, some infuse a specific lump sum, and in at least three cases—Austria, Holland and Canada—deficit financing analogous to the Administration's proposal is used. General revenues account for roughly 15 to 20 percent of program expenditures in almost all other countries, regardless of the manner in which it is infused. In absolutely none of these cases has the entitlement principle been endangered.

From a more positive perspective, there is every reason to actively support the use of general revenues as a part of the system. In order to more fully understand the philosophical basis for the use of general revenues, I ask your permission to digress for a moment on the principles of social insurance.

Back in 1938, Reinhard A. Hohaus, one of the chief architects of our social security system and former Vice President and Chief Actuary of the Metropolitan Life Insurance Company, commented on the essential trade-off that is the essence of the system. He indicated that there is an inevitable contest between the twin objectives of adequacy and equity. The social security system has traditionally struck a balance between the two. Therefore, the purists who advocate the dominance of equity in the system will be left unsatisfied. Similarly, the purists who demand complete social adequacy may also criticize the system, since it can never completely meet that goal. But both sets of critics fail to recognize that if it completely met either goal at the expense of the other, it would be a far less useful instrument.

In his classic statement in 1938, Reinhard A. Hohaus spelled out these issues with the incisiveness and clarity that can be a guide to us now, almost four decades later:

"Social insurance is molded to society's need for a minimum of protection against one or more of a limited number of recognized social hazards . . . (such as dependency). (The) payments (for minimum protection) . . . must be met in one form or another anyway, and social insurance endeavors to organize the budgeting therefor and dispensing thereof through systematic governmental processes. Hence, just as considerations of equity of benefits form a natural and vital part of operating private insurance, so should considerations of adequacy of benefits control the pattern of social insurance.

"The foregoing need not necessarily imply that all considerations of equity should be discarded from a social insurance plan: rather the point is that, of the two principles, adequacy is the more essential and less dispensable."

Thus, the social security system represents a balance between two goals: (1) social adequacy and (2) individual equity. Contributions into the system support three elements consistent with the overall goals:

1. future security for self and spouse when retirement is likely to occur;
2. future security for self, spouse, and other dependents should the unfortunate event of disability or premature death of the family breadwinner occur, and
3. adequate security for less fortunate members of society who have low earnings histories, irregular employment, or become disabled or who die leaving dependents.

There appears to be no justifiable reason why anyone should be excused from supporting the third element. And, our most progressive form of taxation—the income tax, which is the basis of general revenues—is, the fairest way to support the interests of society as a whole.

In addition, a moment's reflection may be sufficient to convince anyone that the payroll tax relieves general revenues of the "welfare" burden that it would otherwise be called upon to support. Why, then, cannot general revenues be called upon when the payroll tax has reached its socially desirable limit? What is sauce for the goose is sauce for the gander.

The second reservation mentioned previously was the concern over where we were going to get the money—general revenues, in this case. Yet, this is the usual question confronted by every program! If the elderly, the disabled, and their dependents or survivors were not lifted out of poverty by social security, where would the money come from to sustain them? Certainly, we would not turn our backs on them! Therefore, the "where would we get the money" criticism merely begs the issue.

The case for general revenues—even in a permanent basis—is clear to the National Council of Senior Citizens. The case for general revenues was recognized in the law from 1944–1950 when language existed authorizing general revenues on an as needed basis. Yet, the President's proposal is far more modest. It requires only sufficient general revenues on a one-time basis to make up for the loss of contributions to the Trust Funds only from 1975 through 1978. The cautious and flexible nature of the general revenue proposal should offend no one.

REMOVING THE CEILING ON THE WAGE BASE SUBJECT TO THE PAYROLL TAX FOR EMPLOYERS

Another proposal of the Administration involves phasing in removal of the ceiling on the wage base subject to the payroll tax for employers. Not surprisingly, the business community has voiced loud objections to this approach. Yet I am surprised that I did not hear similar objections when the previous Administration offered a proposal to raise the tax rate on all covered wages! It seems to me that businessmen, in this case, are not aware of what is in their own best interest. The Administration has been careful to point out that this approach ac-

tually costs employers less than conventional social security financing would cost. At the present time, the full wages of 85 percent of workers in covered employment is subject to the payroll tax; only 15 percent of the covered workforce would impose an extra payroll tax liability on employers. And I am told by the Social Security Administration that there is no evidence that these higher wages are heavily concentrated in certain sectors. This means that the extra payroll tax liability would be shared and will have far less financial impact on individual businesses than the alternative of an across-the-board tax rate increase, as proposed by the previous Administration.

Again, the experience of other industrial nations may serve as a guide. Many foreign systems have covered shares paid with the employers contributing a larger share than employees. This does not represent a basic departure from social insurance principles since there is no magic in an equal division of costs.

To the social security system itself, this approach has many advantages. It does not impose any further future liabilities on the system and it avoids regressive taxation of lower and middle income workers.

This proposal, in particular, is indicative of the care the Administration has taken to assure that: (1) no sector of the economy and no individual will be unduly impacted by the financing needs of the system and, (2) to move in the direction of more progressive financing.

OTHER ADMINISTRATION FINANCING PROPOSALS

The remainder of the Administration's proposals—phasing in modest increases in the taxable wage base for employees; raising the contribution rate for the self-employed; shifting a modest amount of the HI rate to OASDI; moving up the tax rate increase scheduled in the law for the year 2011; and refining the eligibility test for dependents' benefits so that men and women are treated equally—all operate in a conventional manner and improve the financing and equity of the system. Certainly, there should be no controversy attached to any of these proposals.

In summary, the Administration's mix of proposals represents a balanced approach selected with full consideration of the alternatives before us. Additionally, they are appropriately timed, both to meet the needs of the system and to avoid an adverse impact on the economy. Moreover, the proposals operate within the existing benefit structure; they are philosophically consistent with the nature and intent of the program; they are equitable, and they are appropriately cautious and flexible.

OTHER ISSUES

Among the other issues which we would like to address are the retirement test in Social Security, proposals relating to semiannual cost-of-living adjustments and construction of a consumer price index representing the purchasing patterns of the elderly so that cost-of-living adjustments in program benefits will more fairly reflect the effects of inflation on the elderly.

The controversy over the retirement test in the Social Security program has again become prominent. The National Council of Senior Citizens is unalterably opposed to abolishing the retirement test on the grounds that to do so would be financially irresponsible and severely inequitable to most beneficiaries. Since this is not a universally held position, an in-depth explanation is in order. I would, therefore, like to submit for this purpose a booklet entitled *The Retirement Test in Social Security*, published by the National Council of Senior Citizens in May of this year, and authored by Nelson H. Cruikshank, then President of the National Council of Senior Citizens.

In regard to construction of a special consumer price index for the elderly and to granting semiannual cost-of-living adjustments for Social Security recipients, we are fully in support of these proposals as reflected in H.R. 1539, H.R. 1541, and identical bills as introduced by Representative Robert Traxler of Michigan. The present system provides adjustments that are too little and too late.

In conclusion, Mr. Chairman, I would like to impart to this Committee the words of one of your own eminent colleagues, Senator Hubert H. Humphrey:

"A society may be judged by how it treats three groups in its population: Those in the dawn of life, its young; those in the twilight of life, its elderly; and those in the shadows of life, its disabled."

Thus, the decisions made today may be the basis on which our society is judged tomorrow. I thank you.

Mr. PICKLE. Thank you, Ms. Duskin, and I appreciate your testimony. You could not have concluded your remarks with a more desirable or better-liked individual in all America than Senator Humphrey. So I appreciate your comments.

You belong to 3,800 organizations—that is, you represent them in all 50 States. What is the criteria for joining? Do they just organize for social security purposes or elderly groups or what? Do I have any in Austin, Tex.?

Ms. DUSKIN. I am sure that we do. They are voluntary groups. There are individual members, clubs that have formed for purposes other than affiliation with the National Council, and they have affiliated after the fact. Some of them have been formed for the express purpose of affiliating with the Council. It is a variety of different types of people from different types of activities.

Mr. PICKLE. The testimony offered by Ms. Duskin is for the President's proposal, Mr. Jacobs, totally, no deviation to it.

Ms. DUSKIN. Right.

Mr. PICKLE. Do you think the payroll tax has reached its limits on social attainment?

Ms. DUSKIN. Well, I think that if we were to press the payroll tax any further, we would have to be more liberal in changing the structure at the lower end. There is some difficulty in a basically regressive tax. We do have the earned income credit, but that would have to be significantly broadened if we were going to consider imposing any further payroll taxation.

Mr. PICKLE. You make the statement, why can't we use general revenues when the payroll tax has reached its socially desirable limit?

I assume you mean by that we have reached that limit and therefore we must go to general revenues.

Ms. DUSKIN. My suspicion is from the public sentiment that I am in touch with that that very well may be the case, but you would be by far the better judge of that than I.

Mr. PICKLE. We will have to make a judgment on that, but I was impressed that you felt, in effect, that we have to go elsewhere now.

I also want to say that you said you didn't hear "similar objections when the previous administration offered a proposal to raise the tax on all covered wages." You may not have heard them, but we did. Not everybody wants to see the wage base or the rates rise and we did hear some complaints about it.

I think their judgment was that they would rather do that than some other approach.

Ms. DUSKIN. Yes.

Mr. PICKLE. This committee hears objections from all sectors for whatever we do, because it affects all the people and organizations involved. I thought you offered good testimony and we are glad to have it.

I recognize Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I wish to thank Ms. Duskin for her presentation. I have no questions at this time.

Mr. PICKLE. Mr. Jacobs, did you want to ask any questions?

Mr. JACOBS. I just want to express my appreciation, too, for your testimony and for the poetry with which you finished. Senator Humphrey is, I suppose, almost as good as Mr. Pickle at turning a phrase, maybe not quite.

Mr. PICKLE. He gets a lot more recognition.

Mr. JACOBS. He does, doesn't he?

Mr. PICKLE. For the record, I would like to know what organizations in my city belong to your National Association just so I can tell them what excellent testimony you gave.

Ms. DUSKIN. I unfortunately don't have it on the top of my head. There are numerous ones. I would be glad to send you a list of them.

Mr. PICKLE. That will be fine.

We appreciate your coming.

Ms. DUSKIN. Fine. I appreciate the opportunity.

Mr. PICKLE. The next witness will be our old familiar friend from the Association of American Railroads.

If you will come forward and put your testimony on the track, why, we will appreciate it. This is William H. Dempsey, president of the American Railroad Association, and I suppose that this is Mr. Charles Hopkins, who is president of the National Railway Labor Conference.

You two gentlemen are running in tandem, I see.

STATEMENTS OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AND CHARLES I. HOPKINS, PRESIDENT, NATIONAL RAILWAY LABOR CONFERENCE

Mr. DEMPSEY. That's right, Mr. Chairman.

Mr. PICKLE. You are together on this.

Mr. DEMPSEY. We have no division, within the industry at least.

Mr. PICKLE. Fine, that will make your testimony even more interesting.

You may proceed.

Mr. DEMPSEY. Thank you, Mr. Chairman.

We have a joint statement that is very lengthy and we would simply ask that it be introduced into the record.

Mr. PICKLE. Without objection, it will be entered in the record. How lengthy is it?

Mr. DEMPSEY. It is about 3 pounds, I think. It is 34 pages, Mr. Chairman.

Mr. PICKLE. Without objection, it will be included in the record.

Mr. DEMPSEY. Mr. Hopkins and I are here together because the American Association of Railroads represents the industry in legislative matters. As you know, as the committee knows, Mr. Hopkins is the chief labor negotiator for the industry and, as I think will become apparent in the course of our discussion, we propose legislation which does have collective bargaining implications.

What we want to talk about essentially is the impact of the proposed bill on the railroad retirement system. In order to do that, of course, I must say something about the relationship between the railroad retirement system and the social security system.

The chairman will be familiar with this by virtue of membership on the Interstate and Foreign Commerce Committee.

Mr. PICKLE. But I do need to be refreshed so I welcome your testimony.

Mr. DEMPSEY. Fine.

Let me begin with the conclusion in terms of the relationship between the two schemes and I will go backward.

Mr. Jacobs spoke of system not integrated with social security. Ours is. That integration was achieved in 1974 and had taken place over several stages. What we have now in a summary way is a system that is formally separate, but that is substantively integrated.

We have a railroad retirement system that is composed, as we say, of two tiers. What we call tier 1 is the social security equivalent for the railroad worker, and I will explain in a little more detail what I mean by that in a second.

Tier 1 is financed by equal tax contributions, 5.85 percent for employer and employee, just as is social security.

Tier 2 is the equivalent of a private company-financed supplemental pension plan. The only difference is that this one is mandated by statutes administered by the Railroad Retirement Board, but it is financed solely by employer contributions and it was established in the 1974 legislation and in that form and it was contemplated by the Congress that future changes in tier 2 would be preceded by collective bargaining between the unions and employers just as collective bargaining in other industries produces this kind of system in the first place.

Now, the systems were not integrated when they began at all. The Railroad Retirement Act was initially passed in 1937 as a completely separate scheme just as the Federal civil service retirement program is a completely separate scheme today.

It was in 1951 that the first major step toward integration took place and I must refer to that because I will be talking about the mechanism of integration as I go through the points we have to make. That mechanism is called a financial interchange system between social security and railroad retirement.

The basic purpose of the financial interchange was to put social security in the same situation as it would be in if railroad employees were directly under the social security system.

So the way it operates is simply this: Once a year the railroad retirement account transfers to the social security trust fund the amount that would be equal to the amount of social security taxes that would have been collected from the employers and the employees of the railroad industry had those employers and employees paid the social security taxes directly. So that tax transfer is made to the social security trust fund.

In return, the social security system transfers to the railroad retirement account whatever amount of money would be necessary to pay the social security benefits that would be earned by these railroad employees were they directly under the social security system. So it is an integration then of the two systems, the idea being that neither should suffer by virtue of the fact that the railroad employees are not directly under social security.

This integration unhappily fell short in one of the most important respects, benefits were not integrated and then as the term—you will recall what happened, what was referred to as the dual benefit problem. That is to say, railroad employees alone of all employees in the

private industry of the United States were able to secure both the railroad retirement benefits by virtue of railroad service and social security benefits by virtue of service in some other industry.

It is by virtue of the failure of the two systems to be fully integrated that it turned out those two benefits were larger than they would have been for anybody else in American industry who worked for, say, General Motors for part of his career and Ford for another part of his career. That resulted in the windfall benefit to this group of dual beneficiaries and it was that problem that was the main difficulty that confronted the system and threatened to throw the railroad retirement account into bankruptcy.

A special commission was appointed in 1970 by the Congress. Congress directed the parties; that is, the unions and the management, to attempt to forge a recommended solution and bring it to Congress. The result was two further statutory steps of integration, one in 1973 and then finally the Railroad Retirement Act of 1974, which gave us a completely new system.

Now, the financial interchange remains, but the opportunity to earn dual benefits was eliminated and, most important for present purposes, the so-called two tiers were established.

Now, before that time, before 1973, the employers had paid half of railroad retirement taxes and the employees had paid half and the taxes were substantially more than the 5.85 percent, but the benefits were a lot more.

In the 1973 act the rates on employees were reduced, railroad employees, to the 5.85 percent, and it was provided in the statute that from then on employees' rates for railroad retirement would be adjusted in accordance with social security rates and so, too, for employers. Employers picked up the excess tax, but the employers' tax was split into two components, one the same 5.85 percent that other employers paid, and that amount is to be adjusted in the same fashion and along with social security tax changes. The balance of the tax, which was 9.5 percent, is to pay for the so-called second-tier component altogether paid for by the railroads, the equivalent of an outside industry or another private industry's supplemental private pension plan.

Now, that is the general structure that we have in our industry in terms of our retirement system and its relationship to social security. I am afraid that what has happened in the President's planning, in this legislation, is that the drafters of the legislation having an eye toward the social security plan and not the railroad retirement plan, of course, have overlooked the consequences of changes in the social security system, the consequences that befall the Railroad Retirement Account by virtue of this rather intricate statutory scheme of integration.

Now let me go to the first point that I think bears on that general problem. That has to do with the maximum taxable wage base and the proposal that under section 103 of the bill that the maximum taxable annual wage base for employers be escalated sharply and then, finally, that the ceiling be taken off after 1980 altogether.

We, along with the rest of American industry, I am sure, oppose this escalation in general, that is, without regard to any special conse-

quences on the railroad retirement system and we oppose it for the same reasons that I suspect the rest of the American industry does.

I would provide you just with a couple of representative figures. What we are dealing with here is a tax burden so far as our industry is concerned which is becoming close to intolerable. We now pay for railroad retirement a total of 17.2 percent of taxable payroll.

We calculate that that figure would be escalated to close to 20 percent of taxable payroll under the administration's proposal after 1980. Our taxable payroll is about 86 percent of our total payroll, so we would be looking at a retirement tax of about 17 percent of payroll.

Mr. PICKLE. Let me interrupt you, Mr. Dempsey.

Mr. DEMPSEY. Yes, sir.

Mr. PICKLE. Does raising the maximum rates, the wage base and eventually the cap, affect the railroad industry, management and labor, any differently than any other business?

Mr. DEMPSEY. Yes; it does.

Mr. PICKLE. By virtue of the interchange of the two programs?

Mr. DEMPSEY. Yes; it does.

Mr. PICKLE. In what way?

Mr. DEMPSEY. It affects us in a considerably different way and I just want to say before I go to that subject that we just register a general objection along with the rest of American industry to the extent that we are affected no more than the rest of American industry. But this is what happens.

Because of the integration of the systems, the same increase in taxable compensation applies to the whole railroad retirement tax scheme. Now, if it were just tier 1, then we would be affected in the same way as the rest of American industry and all of our competitors.

But unhappily, the way the bill is drawn, the same increase will take place with respect to tier 2 taxes, which are wholly paid by employers; tier 2, as you recall, is the element of the railroad retirement system not equivalent to social security, but is on top of social security and that is our equivalent to a private supplemental pension plan in other industries.

Now nobody else's private pension plan would be affected by this bill, but ours would be. We find it hard to believe really that the administration intended this result. It has nothing to do with the social security system, it has nothing to do with the problems that beset that system. Tier 2 is strictly a railroad tier that is not similar at all to social security.

We have our own problems under tier 2. We thought the actuaries had told us that the 1974 legislation would virtually wipe out the deficit and they now tell us that they made new actuarial assumptions and we are confronted again with the deficit and prospective running out of money in 1986 or so. But that is a discrete problem. That has nothing to do with the social security system. It has only to do with this tier 2, this supplemental pension plan that happens to be administered by virtue of Federal law, but that is functionally the equivalent of any other private pension plan.

Now, the purpose of splitting tier 1 and tier 2 in the 1974 legislation was to make this distinction: that is to say, in effect, all right, here we have tier 1, which is social security—it just has a different

name. Here is tier 2, which is company-funded supplemental pension plan, and the purpose of all that was that whatever changes were made in the social security system, benefits, taxes, whatever they might be, would flow through automatically to tier 1 of the railroad retirement system so that our employees would be treated exactly the same as all other employees in the United States under social security, and so the employers would, too.

But tier 2, that was not to be the purpose at all of establishing tier 2. The purpose of establishing tier 2 was to separate that so that changes in the social security would not flow through automatically to the heart of the railroad retirement scheme that is essentially the equivalent of a private pension plan. This is what the House Interstate and Foreign Commerce Committee report had to say in that connection.

It said that tier 2 constitutes, in essence, a company pension program even though administered for historical reasons by the Federal Government so that future changes, and I quote, "will rise out of collective bargaining between the carriers and the unions."

In point of fact, at the present time the unions and railroad management have opened negotiations for this forthcoming round of wage and benefit changes. And as a part of those negotiations management has requested a discussion with the unions of the problems that still beset tier 2 of the railroad retirement system. So that the railroads now are putting into play the fundamental scheme that the Congress set up in 1974, namely, that whenever problems occur in tier 2 or whatever changes may have to be recommended with respect to legislation governing tier 2, that any such changes or recommendations be preceded by collective bargaining between the parties.

Obviously legislative action of the sort recommended by the administration, as I say I think unintentionally, would cut across the statutory scheme. So what we are saying in substance is we are opposed to the increases in taxable compensation for tier 1 just like other employers are for social security, but we are much more. We feel much more strongly about the notion that whatever changes are made in tier 1 taxes should fall into tier 2 because tier 2 has nothing to do with the social security system.

We have appended to our statement a draft revision of section 103 that would limit the impact of these tax changes to tier 1 so that tier 2 would remain unaffected.

Mr. PICKLE. Do you have that listed in your testimony?

Mr. DEMPSEY. Yes; I do.

Mr. PICKLE. What page is that?

Mr. DEMPSEY. Page 21, we note the fact that we prepared that revision and that it is contained in appendix A. It is the very first sentence on the top of page 21.

Mr. PICKLE. All right, appendix A, which is your proposal that would give relief for the tier 2 problem.

Mr. DEMPSEY. That would keep tier 2 taxes as they are, unaffected by whatever changes are made in social security taxes and tier 1 taxes.

Mr. PICKLE. All right.

Mr. DEMPSEY. Now the next problem is again we hope, and this time we feel fairly confident in our hope, an inadvertent drafting error on the part of those who prepared the bill. It has to do with section 201

of the bill, which relates to contributions from the general treasury to the social security trust fund in periods of high unemployment.

We understand the problems in general that are associated with this kind of proposal. We can see both the merit and demerit to it and we feel we have nothing unique to contribute to that important general debate. Our concern is that if, indeed, this provision is passed as enacted, it would have a rather dramatic and, as I say, surely, almost certainly, unintended adverse impact on the railroad retirement trust fund. That is because of the very technical way in which the financial interchange between these two systems works.

We have tried to lay this out in a reasonably comprehensive form in our statement. I don't want to tax the subcommittee with reading that. Just let me try my hand at what I suppose will be an inadequate explanation of it just briefly.

Under the bill the amount of money from general funds that would be given to the social security trust fund would be calculated by a formula and one of the ingredients of the formula has to do with how much is paid in the year in question by way of social security taxes.

Now, when they define what they mean by "social security taxes," in that respect, as I say, inadvertently they do exclude railroad retirement tier 1 taxes. Now what that means is that the amount of money that would come from the general treasury would really be less than it should be because the whole railroad population and their taxes would be taken out of that calculation.

Now, whether that is a good thing or not, it doesn't seem to have any rationale to it, but perhaps it could be defended in some way. But the point of the fact is this: Under the financial interchange what social security will do would be to say, well, now, if we had no railroad retirement system and all these employees were subject to social security, we would get that additional money by virtue of this general funding provision. And, therefore, what we are going to do is take that money from the railroad retirement account—and that is quite literally what will happen.

So what will happen in periods of high unemployment, there will be a subsidy from the general treasury to the social security account which is intended, but also there would be a subsidy from the railroad retirement account to the social security account, and that surely is not what was intended.

Now, as I say, I am just confident that this—

Mr. JACOBS. Could I elicit a little bit on that? By what authority does social security make up their alleged deficit by taking from your tier 2 trust fund?

Mr. DEMPSEY. Well, it is this: It is the financial interchange. Now the purpose of the financial interchange—and it is written this way—is that the social security trust fund will not lose or gain by virtue of the fact that railroad employees are not directly under social security.

Now in this particular case it would lose by virtue of the fact that railroad employees are not directly under social security simply because of the way that this formula is written. When the formula says we want to look at how many taxes were paid for social security, they don't look to the tier 1 taxes paid by railroad employees and employers. I just think it has to be an oversight.

Now here, too, it will be a very expensive one to us. It would cost us—we don't know, but over the first 10 calendar years something around \$153 million. Here again we have appendix B that would take care of that problem.

As to the question of decoupling, the subcommittee is thoroughly familiar with the issue and with all of the arguments that relate to that question. I would say the railroad industry supports the President's plan with respect to the title II, the decoupling provision. No amendment of the Railroad Retirement Act would be necessary in order to have the decoupling steps be effective in the railroad retirement system because of the way the two plans are integrated.

There are two final points I would like to make briefly, briefly not because they are not important, but briefly because I believe that these issues are not formally or, strictly speaking, within the jurisdiction of this committee, but rather, would fall within the jurisdiction of the Interstate and Foreign Commerce Committee.

However, one of them I think the committee should know about, particularly our position on this, because it would have an impact on the cash flow of the social security system. This has to do with the financial interchange once again and what we would like to seek from the appropriate committee sometime in course of the consideration of these legislative changes for social security would be a change in the financial interchange that would put that interchange on a current basis.

Now, this was considered in the course of the 1974 legislation. What we have is fairly simple. At the present time the transfer of money from social security to railroad retirement is made on a delayed basis of about 18 months. That is to say, Social Security holds our money for about 18 months before they give it to us. They pay interest on it so it has nothing to do with the long-term financial condition either of social security or the railroad retirement system. But it is a lot of money in our terms. It is not so much in social security terms, but it is a lot of money in our terms, and it seriously affects our cash flow.

That is particularly so now that we learn from the actuaries of the Board that due to changed assumptions the Railroad Retirement Fund looks like it is going to run out of money in 1986.

Now the impact of changing financial interchange to a current basis, an accrual basis from the current delayed basis, would avert the running out of money for 2 years, to 1988.

As I say, it means a great deal to us. On the other hand, to social security it would mean, if they were to run out of funds ever, but a few days' difference to them, but it is 2 years' difference to us.

Now, when it was considered in 1974 there really was no opposition to the proposal. The unions agreed with management that this was part of our program that we would submit to the Congress and I would just like to quote from the House Interstate and Foreign Commerce Committee report, which explained what happened.

This is what it says:

* * * (R)epresentatives of the Social Security Administration informed the committee that while they had no objection in principle to the change proposed, it would come at an inopportune time. The current estimates of the costs of the social security cash benefits programs * * * indicate a close balance of income and outgo over the next few years and a significant long-range actuarial defi-

ciency. As a result changes in social security financing will be needed. It is anticipated that following studies by the current Advisory Council on Social Security * * *, recommendations for changes in the financing of the social security program will be sent to the Congress.

That is where the Congress is now, and therefore we will at an appropriate time follow the lead pointed by the House Interstate and Foreign Commerce Committee in 1974. We do want this committee to know that we propose to do that at an appropriate time.

The other matter that again is not formally at least, within the jurisdiction of this committee, and it has less consequence to social security is the matter of the sex-base distinctions that the committee has been discussing today, and the committee is thoroughly familiar with. Here, if changes are made in the social security law, they will not automatically pass through to railroad retirement simply because of the way the two acts are constructed and, therefore, we would have to seek and secure comparable amendments to the Railroad Retirement Act.

I simply want to state that our position is that we support the administration's proposals with respect to social security and if those proposals are enacted as part of the social security system, then they really ought to be enacted as part of the railroad retirement system, too. In point of fact, the comparable provisions with respect, for example, to the spouses' benefits and widows' and widowers' benefits were put in the railroad retirement system in the 1940's—1946 and 1951—patterned directly after the similar provisions in the Social Security Act.

If, on the other hand, something should go awry and these provisions were included in the social security system, but not in the railroad retirement system, then I must say our deficit problem would be greatly aggravated, because then we would be paying benefits under tier 1, for example, the social security equivalent, that the social security would not be paying and because of the nature of the financial interchange, we would have to bear the full cost of those additional benefits.

So what we are saying is that essentially here, too, if changes are made in the social security, comparable changes should be made in railroad retirement. As I indicate, that matter would be within the jurisdiction of the Interstate and Foreign Commerce Committee.

[The prepared statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AND CHARLES I. HOPKINS, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

William H. Dempsey is the President of the Association of American Railroads. The Association represents almost all of the nation's railroads in a wide variety of matters, including legislative matters, that concern the railroad industry. Charles I. Hopkins, Jr., is the Chairman of the National Railway Labor Conference, succeeding Mr. Dempsey in that position on April 1, 1977. The Conference represents almost all of the nation's railroads in national collective bargaining with the unions representing their employees and in regard to other matters concerning labor-management relations in the railroad industry. This Statement is directed to the bill drafted by the Department of Health, Education, and Welfare (H.R. S218) for the purpose of restoring the financial integrity of the social security system in accordance with the President's May 9, 1977 Message to the Congress. We are making this Statement jointly, on behalf of the railroads, because that bill may have impacts upon collective bargaining in the railroad industry as well as otherwise involving matters that are important to all of the railroads.

Since a 1951 amendment to the Railroad Retirement Act of 1937, the railroad employment of individuals who have less than 10 years of such employment when they retire is placed directly under the social security system and included with other employment of such individuals for purposes of determining the social security benefits to which they are entitled. And, while the Congress has provided a separate railroad retirement system for railroad employees with 10 or more years of service, a portion of the benefits paid and of the employment taxes imposed pursuant to that system are directly equivalent to benefits paid and taxes imposed pursuant to the social security system.

Hence, legislation affecting social security benefits or taxes is a matter which directly concerns the railroads. In addition, and particularly in regard to the legislation now pending before this Committee, it is important to the railroads that social security legislation does not adversely affect that portion of the railroad retirement system (including the taxes paid by the railroads thereunder) which is not equivalent to social security, but rather constitutes a second level of benefits and taxes over and above the social security level.

In general, the railroads object to the proposal which would eliminate the present maximum limit upon the wages subject to the employment taxes paid by employers. But even if that proposal should otherwise be adopted, it certainly should not apply to that portion of the tax imposed on the railroads by the Railroad Retirement Tax Act which is not equivalent to the social security tax upon employers. We also urge that the proposal for contributions of funds from the General Treasury to the social security trust funds in periods of high unemployment should be revised, if otherwise adopted, to avoid an adverse effect upon the railroad retirement system which we believe to be unintended and which certainly is unjustified. We support the proposed indexing amendments and the proposed equal rights amendments, and we urge that similar equal rights amendments be made to the Railroad Retirement Act of 1974 so as to eliminate gender-based distinctions in that Act. Finally, we urge that the legislation contain a provision placing the financial interchange between the railroad retirement and social security systems on a current or accrual basis.

We believe that our specific comments in regard to these matters can be better understood if they are prefaced by a fuller, although necessarily summary, description of the relationship between the railroad retirement and social security systems. Hence, we will attempt first to provide that description, including some historical background.

THE RELATIONSHIP BETWEEN THE RAILROAD RETIREMENT AND SOCIAL SECURITY SYSTEMS

When the railroad retirement system was created pursuant to the Railroad Retirement Act of 1937 (50 Stat. 307) and the Carriers' Taxing Act (50 Stat. 435),¹ there was no direct relationship between that system and the social security system. Nevertheless, the two systems performed generally similar functions in their respective spheres. Thus, they generally provided the same kind of benefits which were financed by employment taxes imposed equally upon both employers and employees, although both the benefits paid and the taxes imposed by the railroad retirement system were higher than under the social security system. See, *e.g.*, Report of the Commission on Railroad Retirement (June 30, 1972), at 6-7, 58-61.² (Hereinafter, "CRR Report.") Moreover, as "the social security system grew in scope and adequacy, the railroad retirement system [was] adjusted to keep abreast." CRR Report at 7, although continuing to pay a higher level of benefits. This included the provision of survivor and spouse benefits by 1946 (60 Stat. 722, 729) and 1951 (65 Stat. 683) amendments to the Railroad Retirement Act of 1937. Those new benefits generally were patterned after, and justified by reason of, similar benefits previously added under the social security system,³ and include the only gender-based distinctions made by the railroad retirement system.

¹ The Carriers' Taxing Act, as amended, now is known as the Railroad Retirement Tax Act, and is included in the Internal Revenue Code of 1954, 26 U.S.C. §§ 3201-3232.

² That Report is entitled "The Railroad Retirement System: Its Coming Crisis."

³ See, *e.g.*, H. Rept. No. 1989, 79th Cong., 2d sess. (1946), at 2, 4, 9, 13-21; S. Rept. No. 1710, 79th Cong., 2d sess. (1946), at 3-4; S. Rept. No. 890, 89th Cong., 1st sess. (1951), at 2, 8, 23, 64, 68.

Some partial steps towards integrating the railway retirement and social security systems were taken by the Congress in the 1951 amendments to the Railroad Retirement Act of 1937. In addition to transferring to the social security system the railroad service of (and taxes paid in regard to) individuals who had less than 10 years of such service upon retirement, the Congress then enacted what has become known as the "financial interchange" between the railroad retirement and social security systems (65 Stat., at 687). The financial interchange "was designed to establish the principle that the Federal old-age and survivors insurance trust fund should be maintained in the same position it would have been if there had been no separate railroad retirement system,"⁴ so that the Congress "in substance, declares it to be the congressional policy that the social security system shall neither profit nor lose from the existence of the separate railroad retirement system."⁵

In effect, the financial interchange "provided that each year the Railroad Retirement Account would pay the social security trust funds the amount of taxes which would have been contributed by current railroad workers (and employers), had they been covered by social security," while the "social security trust funds would pay the Railroad Retirement Account the benefits which would have gone to current railroad retirement beneficiaries, had they been under social security coverage." CRR Report, at 62. The "actual transfer of funds was made retroactive to 1937," and the "settlement is made on a net basis," but the "gross reimbursement to the Railroad Retirement Account by OASDI" was "reduced by the dual OASDI benefits already paid directly to railroad beneficiaries by social security * * *." *Ibid.*

While the Congress through the financial interchange thus substantially integrated the two systems in regard to the financing of that portion of railroad retirement benefits that generally is equivalent to social security benefits, unfortunately it did not then integrate or coordinate the benefits themselves. While not expected at the time, over a period of years that resulted in disastrous adverse effects upon the financial health of the railroad retirement system. The failure to coordinate the social security portion of railroad retirement benefits with social security benefits gave rise to a "dual benefit" problem. If an individual had sufficient railroad and non-railroad employment to qualify for benefits under both systems, the total of the social security portion of his railroad retirement benefits plus his direct social security benefits substantially exceeded the amount of the social security benefits that would have been paid to him if based upon combined railroad and non-railroad service. And, the cost of this excess or "windfall" social-security type benefit was paid entirely by the railroad retirement account, and thus out of that portion of railroad retirement taxes that exceeded social security taxes. This resulted from the fact that, under the financial interchange, the reimbursements to the railroad retirement account from the social security trust funds were reduced by the amount of the social security benefits paid directly by the social security system.⁶

The House Committee on Interstate and Foreign Commerce stated, in 1974, that the "lost reimbursement to the Railroad Retirement system over the years arising out of this situation is in excess of \$4 billion," and that:

"The deficit in the Railroad Retirement Account at present is almost entirely due to the lost reimbursement to the Account arising out of the receipt of Social Security benefits by persons who also are receiving Railroad Retirement benefits. As was stated earlier in this report, this lost reimbursement amounts to 7.72 percent of taxable payroll, out of a total deficit of 9.05 percent, or \$451 million a year out of a total deficit of \$529 million. In other words, were it not for the problem of dual beneficiaries, the railroad retirement system would be almost completely solvent." H. Rept. No. 93-1345, *supra* at 2, 7. Those statements were reiterated by the Senate Committee on Labor and Public Welfare, S. Rept. No. 93-1163, *supra* at 2, 8.

By 1970, the Congress had become sufficiently concerned about the financial integrity of the railroad retirement system to establish the Commission on Railroad Retirement to "conduct a study of the railroad retirement system and its financing for the purpose of recommending to the Congress on or before July 1, 1971, changes in such system to provide adequate levels of benefits thereunder

⁴ H. Rept. No. 1215, 82d Cong., 1st sess. (1951), at 13.

⁵ S. Rept. No. 890, *supra* at 8.

⁶ See e.g., H. Rept. No. 93-1345, 93d Cong., 2d sess. (1974), at 2-3, 7-8; S. Rept. No. 93-1163, 93d Cong., 2d sess. (1974), at 2-3, 7-9.

on an actuarially sound basis." 84 Stat. 791, 793. The deadline for the Commission's report subsequently was extended to June 30, 1972 (84 Stat. 101, 102), and the result was the June 30, 1972 Report of the Commission on Railroad Retirement to which we have already referred. Among other things, the Commission recommended that future accruals of excess or windfall dual benefits should be terminated, while preserving the equities of those who had already qualified for such benefits; and that a "two-tier" system should be created which would clearly separate the social security benefits (Tier I) and the additional or supplemental benefits (Tier II) paid to retired railroad employees. See, e.g., CRR Report, at 3-4, 367-369, 502-503.

The Congress initially reacted, in 1972, by enacting a statutory direction that the "representatives of employees and retirees and representatives of carriers," no later than March 1, 1973, submit to the Congress "a report containing the mutual recommendations of such representatives based upon their negotiations and taking into account the report and specific recommendations of the Commission on Railroad Retirement designed to insure" the actuarial "solvency" of the railroad retirement system. 86 Stat. 765, 767. While unable to resolve all of the complex issues involved, the representatives of the railroads and their employees did agree upon and propose to the Congress "practical legislation as a first step in the resolution of these difficult and complex long-range problems."⁷ In particular, as we shall explain, they proposed an adjustment of the tax burden and a clear separation of that portion of railroad retirement taxes which is equivalent to social security taxes from that portion which is over and above the taxes imposed under the social security system.

In a 1973 statute enacting the legislation thus proposed by the railroads and unions, the Congress also directed the creation of a joint railroad-union negotiating committee or "group" to submit to the Congress, by April 1, 1974, their "joint recommendations for restructuring the railroad retirement system in a manner which will assure the long-term actuarial soundness of such system, which recommendations shall take into account the recommendations of the Commission on Railroad Retirement." 87 Stat. 162, 165. The Congress further directed that the "joint recommendations contained in such report shall be specific and shall be presented in the form of a draft bill." *Ibid.* The joint railroad-union committee did agree upon and submit a proposed bill which, with some changes, was enacted as the Railroad Retirement Act of 1974 (thus superseding the 1937 Act). 88 Stat. 1305, 45 U.S.C. §§ 231 et seq.

Apart from a special tax imposed upon the railroads to pay for certain "supplemental annuities,"⁸ prior to the 1973 statute to which we have referred, the Railroad Retirement Tax Act imposed a tax rate of "10.60 percent on railroad employees and employers alike," thus exceeding the 5.85 percent imposed upon employers and employees under the Federal Insurance Contributions Act by 4.75 percent with respect to each group. The maximum taxable compensation was (and now is) the same, except that the maximum (for both employers and employees) is on a monthly basis under railroad retirement and on an annual basis under social security, so that the railroad retirement monthly maximum is one-twelfth of the social security annual maximum. See H. Rept. No. 93-204, *supra* at 12-13; S. Rept. No. 93-202, *supra* at 15.

The 1973 Act reduced the tax rate imposed upon railroad employees by 4.75 percent to 5.85 percent, so as to impose the identical tax rate upon employees as is imposed by the social security system. Concomitantly, the tax rate imposed upon the railroads was increased by 4.75 percent to 15.35 percent. However, "the 15.35 percent" was divided "into 9.5 percent plus the social security tax rate on employers (5.85 percent)" so as "to avoid the need for amending the Railroad Retirement Tax Act any time the social security tax rate is changed." H. Rept. No. 93-204, *supra* at 13; S. Rept. No. 93-202, *supra* at 16. Hence, Section 3201 of the Internal Revenue Code now imposes upon railroad employees "a tax equal

⁷ H. Rept. No. 93-204, 93d Cong. 1st sess. (1973), at 2; S. Rept. No. 93-202, 93d Cong., 1st sess. (1973), at 3.

⁸ That special tax was first enacted in 1966 by 80 Stat. 1073, and is now provided for by subsections (c) and (d) of 26 U.S.C. § 3221. The Railroad Retirement Board makes quarterly determinations of the amount per railroad employee man-hour which is necessary to pay the supplemental annuities, and that amount becomes the rate of tax per employee man-hour which is imposed for the next quarter. Such amounts are paid into (and the supplemental annuities are paid out of) a railroad retirement supplemental account, which is separate and apart from the basic railroad retirement account.

to the rate of tax imposed with respect to wages" by Section 3101 in regard to employees under social security, applicable to "so much of the compensation paid in any calendar month to such employee of services rendered by him as is not in excess of an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined" by Section 3121 for purposes of social security. Subsection (b) of Section 3221 of the Code likewise imposes upon the railroads the rate of tax imposed upon employers under social security by Section 3111, and subsection (a) of Section 3221 imposes upon the railroads an additional "9.5 percent of so much of the compensation paid in any calendar month by such employer for services rendered to him as is, with respect to any employee for any calendar month, not in excess of an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined" by Section 3121 for purposes of social security.⁹

As we have noted, and as the committees which considered the legislation recognized, the 1973 Act "carrie[d] out the terms of an agreement reached through nationwide collective bargaining" between the railroads and unions representing their employees. H. Rept. No. 93-204, *supra* at 2; S. Rept. No. 93-202, *supra* at 3. The proposed legislation thus agreed upon was part of a broad agreement, contingent upon the enactment of that legislation, revising and extending national wage and rules agreements with the unions for an additional 18 months. The railroads and the unions generally recognized that the removal from the employees of the 4.5 percent in excess of the social security tax rate, and the assumption of that additional amount by the railroads, was the equivalent of a wage increase of slightly more than five percent. But while "all of the other major railroad unions accepted the Carriers' view of the tax pickup as a form of wage increase in real terms," the Sheet Metal Workers' International Association "did not" and urged that its members should receive a wage increase that did not take the tax adjustment into account. Report of Emergency Board No. 185 (July 2, 1974), at 3. Emergency Board No. 185 agreed with the railroads and urged that union to settle on the same basis as the other unions in regard to wages (*id.*, at 3-6), which eventually was done.

The enactment of the Railroad Retirement Act of 1974 substantially completed the coordination of the railroad retirement and social security systems insofar as the social security level of taxes and benefits is concerned. The 1974 Act retained the eligibility requirements for benefits thereunder that were contained in the 1937 Act as amended, and which differ in some respects from those contained in the Social Security Act. However, the payment of excess or windfall dual benefits was terminated, except insofar as the equities of those already eligible for such benefits were preserved, and a "two-tier" system was established in substance.

The nature and significance of this two-tier system is explained in the Committee reports, as follows:¹⁰

"Although the bill would not adopt the 'two-tier' system in form, essentially it does so in substance. One major component of the new railroad retirement benefit formula which the bill would establish is in essence a social security benefit. That component would be calculated on the basis of the formula provided in the Social Security Act as applied to all of the employee's wages and services, non-railroad as well as railroad. All future increases in the level of social security benefits would be applied to this component of the new railroad retirement formula, both to people who retire after the increases become effective and to people on the retirement rolls, in the same way as if they were social security beneficiaries.

"Under the financial interchange between the railroad retirement and social security systems, which the bill would retain, this social security component would be financed by the social security system as at present, and that portion of both employer and employee railroad retirement taxes that are the equivalent of social security taxes would be transmitted to the social security system as at present.

"Consequently, when taken together with the phaseout of dual benefits, these provisions of the bill would accomplish the principal goal of the Commission's 'two tier' recommendation—a clear and permanent isolation of the social security

⁹ In addition, as I have already noted, subsections (c) and (d) of Section 3221 continue to impose upon the railroads a special tax for payment of certain supplemental annuities. I note, also, that Section 3211 of the Code imposes upon certain employee representatives a tax that is equal to the combined tax imposed upon railroads and railroad employees.

¹⁰ H. Rept. No. 93-1345, 93d Cong., 2d sess. (1974), at 19; S. Rept. No. 93-1163, 93d Cong., 2d sess. (1974), at 19.

component of railroad retirement benefits based upon combined railroad and non-railroad service and compensation, from the additional component riding on top of social security which is based on railroad service and compensation alone and is financed by the railroad industry."

The "social security component of railroad retirement benefits" commonly is referred to as "Tier I benefits," and "the additional component riding on top of social security" commonly is referred to as "Tier II" benefits. So, too, the portion of railroad retirement taxes equivalent to social security taxes commonly is referred to as "Tier I taxes," and the additional portion of railroad retirement taxes commonly is referred to as "Tier II taxes." We shall use those terms from time to time hereinafter in this Statement. The Committees which recommended enactment of the 1974 Act noted, among other things, that as a result of that Act and the 1973 Act Tier II constitutes "in essence, a company pension program administered, for historical reasons, by the Federal Government," and thus those Committees contemplated that "[f]uture changes" therein "will arise out of collective bargaining between the carriers and the unions." H. Rept. No. 93-1345, supra at 16-17; S. Rept. No. 93-1163, supra at 16-17.

Upon the basis of actuarial estimates provided by the Railroad Retirement Board and its staff, the railroads and unions understood that their proposed bill would, if enacted, reduce the actuarial deficit of the railroad retirement account to less than one percent of taxable payroll, and assure a positive balance in that account at least through the year 2000. Hence, it was contemplated, as the Committee reports stated, that enactment of the 1974 Act would place the railroad retirement system "on a sound financial basis." H. Rept. No. 93-1345, supra at 1; S. Rept. No. 93-1163, supra at 1. Subsequently, however, in the Thirteenth Actuarial Evaluation of the Railroad Retirement Account, the Actuarial Advisory Committee estimated that the actuarial deficit had been reduced to only 3.59 percent and that the Account will be exhausted in 1986.¹¹

While that estimate is a matter of serious concern, it basically involves Tier II and an immediate solution is not required. Thus, while the railroads have included the topic of possible means of resolving the problem in the current round of negotiations with the unions upon new national wage and rules agreements, which negotiations are now in progress, in our view it is not a matter which generally should concern the Committee or the Congress in connection with the proposed legislation to which this Statement is addressed. As we shall point out in discussing the specifics of that proposed legislation, however, certain of its features could affect the financial condition of the railroad retirement account, which is a factor that the Congress properly should consider in passing upon those features.

In addition, as we also shall explain below, a significant reason for the estimate that the railroad retirement account will be exhausted in 1986 was the failure of the Congress to include in the 1974 Act a provision, which had been included in the bill proposed by the railroads and unions, to put the financial interchange on a current basis. Since that provision was omitted because of a belief that the Congress should await legislation dealing with the financial problems of the social security trust funds, rather than because of a lack of merit, inclusion of that provision in the pending legislation appears to us to be appropriate and desirable.

MAXIMUM TAXABLE WAGE BASE

Under the existing law, Section 230 of the Social Security Act provides that the "contribution and benefit base" utilized in determining annuities is increased each year, over an initial base in 1973 of \$13,200, by a formula based upon increases in average wages. 42 U.S.C. § 430. Section 3121(a) of the Internal Revenue Code provides that the amount thus determined shall also constitute the maximum annual taxable wage base for purpose of the social security taxes paid by both employers and employees. 26 U.S.C. § 3121(a). Under Section 3201 of the Code, the maximum taxable monthly wage base for railroad employees is one-twelfth of the maximum taxable annual wage base thus established for social security, and under Section 3221 of the Code the maximum taxable monthly wage base for railroad employers similarly is one-twelfth of the annual social security maximum.

Hence, both employers and employees are subject to the same maximum under both the railroad retirement and social security systems, and essentially

¹¹ See 1976 Annual Report of the Railroad Retirement Board, at 51-53.

the same maximum applies to both systems, although the railroad retirement system utilizes a monthly maximum while the social security system utilizes an annual maximum. At present, the monthly maximum taxable wages for railroad retirement taxes is \$1,375, while the annual maximum for social security taxes is 12 times that amount or \$16,500. However, the maximums thus applicable under present law are indexed so as to move upward with wage inflation.

Section 103 of the bill submitted by the Department of Health, Education, and Welfare would destroy that congruity, which has existed from the very beginning of the railroad retirement and social security systems, between the maximum taxable wage bases applicable to employers and employees. The maximum taxable annual wage base for employers would be increased arbitrarily to \$23,400 for 1979 and \$37,500 for 1980, and no maximum whatsoever would be applicable for years after 1980 so that employers would pay taxes based upon all wages of their employees. On the other hand, employees would continue to be subject to maximums determined under the present law, apart from arbitrary \$600 increases in 1979, 1981, 1983 and 1985, under Section 104 of the bill. Moreover, those changes in the maximum taxable annual wage bases for purposes of social security taxes would also be made applicable (on a monthly basis, except insofar as all limitations would be removed as to employers after 1980) to the railroad retirement taxes paid by the railroads and their employees. And that would be true of the 9.5 percent additional Tier II tax paid by the railroads as well as of the 5.85 percent Tier I tax, paid by both the railroads and their employees, which is the equivalent of the social security tax rate.

The railroads are strongly opposed to any change in the maximum taxable wage bases provided by present law. As we have noted, under the present law the maximums are adjusted annually to allow for inflation. Any further increase in those maximums, and of course the elimination of any limit upon taxable wages, effectively increases the employment tax burden. And, the plain fact of the matter is that the employment tax burden now imposed upon the railroads is close to intolerable, so that there is no room for further significant increases.

The railroads now pay the 5.85 percent Tier I tax that is equivalent to social security taxes, plus the additional 9.5 percent basic Tier II tax, plus the supplemental tax which as presently calculated amounts to about 1.85 percent of taxable payroll, for a total of 17.2 percent of taxable payroll. We estimate that the proposed increase in the maximum to \$23,400 in 1979 would be equivalent to another 0.6 percent of current taxable payroll if limited to the Tier I tax and 1.7 percent of current taxable payroll if applied to both the Tier I and the Tier II taxes. And, once the maximum is eliminated altogether in 1981, if the proposed bill should be enacted, the estimated increase would be 1 percent of current taxable payroll if limited to Tier I and 2.6 percent of taxable payroll if applied to both Tier I and Tier II taxes. Since taxable payroll in 1976 (about \$7.5 billion) was almost 86 percent of total payroll (about \$8.75 billion), in terms of total wages paid by the railroads the increases in regard to Tier I taxes would be about 0.5 percent as of 1979 and 0.9 percent in 1981 when no maximum would be applicable, and in regard to both Tier I and Tier II would be 1.4 percent in 1979 and 2.3 percent in 1981.

Tax increases of this magnitude must be a matter of great concern to any industry, but they will be particularly harmful to the railroad industry which already has severe financial problems. The bankruptcy of several railroads within recent years is well known to the Congress, and the industry as a whole is burdened by inadequate earnings. In 1976, for example, the rate of return of all Class I railroads on net investment was only 1.49 percent. Moreover, even to the extent that increased taxes could be passed on through higher freight rates without adversely affecting traffic, the result would be to boost an inflationary spiral that even now is of utmost concern to almost everyone.

Furthermore, if some upward adjustment of the maximum taxable wage bases should be adopted, there is no justification for differentiating between employers and employees in that regard. From the beginning, the maximums applicable to employers and employees have been identical, under both the railroad retirement and the social security systems. It hardly is unfair to require the employees to pay half when they receive all the benefits, and that requirement serves the important purpose of inhibiting political and other pressures for inordinate benefit increases as well as making possible a more realistic tax burden upon employers. We estimate that on an overall basis, if the proposed bill is enacted, the railroads'

tax base will be about 11 percent more than the tax base applicable to their employees in 1979, and about 17 percent more than the base applicable to their employees in 1981.

We are even more concerned, if possible, by the proposal to change the maximum taxable wage base in regard to Tier II railroad retirement taxes as well as to social security taxes and the Tier I railroad retirement taxes that are the equivalent of social security taxes. Indeed, we can hardly believe that HEW so intended, even though its bill clearly would have that effect, since President Carter in his message referred only to the problems of the social security system and the bill submitted by HEW does not otherwise directly apply to the railroad retirement system.

But however that may be, if the Congress should in the present circumstances change the maximum taxable wage base applicable to Tier II railroad retirement taxes, it would undermine the primary purpose of establishing the two-tier system. As we have already explained, the 1973 amendment of the Railroad Retirement Tax Act and the Railroad Retirement Act of 1974 clearly and intentionally separate the railroad retirement taxes and benefits that are the equivalent of social security taxes and benefits (Tier I) from those that are in excess of social security taxes and benefits (Tier II). Thus, while it was contemplated that the level of Tier I taxes and benefits would be adjusted automatically with adjustments in social security taxes and benefits, it also was contemplated that future adjustments in Tier II taxes and benefits would be primarily a matter to be worked out by the railroads and unions in collective bargaining. As the House Interstate and Foreign Commerce Committee and the Senate Labor and Public Welfare Committee remarked at the time, Tier II constitutes "in essence, a company pension program," even though "administered, for historical reasons, by the Federal Government," so that future changes "will arise out of collective bargaining between the carriers and the unions." See p. 13, *supra*.

Indeed, as we have noted, one of the subjects in the national negotiations currently in progress between the railroads and the unions representing their employees is possible measures to propose to the Congress in view of the financial problems of the railroad retirement system. Because of the financial interchange between the railroad retirement and social security systems, in regard to Tier I taxes and benefits, those problems are Tier II problems and any proposed solution necessarily will be in terms of Tier II finances and benefits. Exclusion of Tier II taxes from any changes in the maximum taxable wage bases made by the legislation presently before the Congress will not affect the social security system or its financial problems in any way.

We have prepared a revision of Section 103 of HEW's bill which would limit the proposed changes in the maximum tax base applicable to the railroads to the Tier I tax (Section 3221(b) of the Code), but which otherwise would not change that proposal despite our opposition to the proposed changes in general. A copy of that proposed revision is attached as Appendix A hereto. We concede, of course, that if the maximum taxable wage base is changed for purposes of social security taxes a similar change should be made for purposes of the Tier I railroad retirement taxes that are the equivalent of social security taxes. That is part of the concept of the two-tier system, which in effect integrates Tier I with social security, just as the separateness of Tier II is a part of that concept. For the reasons we have stated, we believe that the Congress should not change any aspect of the provisions of the existing law regarding maximum taxable wages, but if some changes are made they certainly should not be applied to Tier II railroad retirement taxes.

CONTRIBUTIONS FROM THE GENERAL TREASURY

Section 102 of the bill submitted by HEW provides for contributions from the General Treasury to the social security trust funds in periods of high unemployment. While we see some dangers in such an approach, there also are some circumstances in which partial assistance from the General Treasury in meeting the ever increasing costs of paying benefits may be justified. Our principal concern in regard to this aspect of the bill is that, if enacted in its present form, it will have an adverse effect upon the railroad retirement system that surely was not intended and cannot possibly be justified. This results from the fact that the proposed Section 102 has failed to take account of the financial interchange between the railroad retirement and social security systems.

We have already described the financial interchange and the fact that it is intended to place the social security trust funds in the same position that they would be if the railroads and railroad employees were covered directly by the social security system. The formula utilized in the proposed Section 102 for determining the amount of the contributions to the social security trust funds includes a factor based upon the amounts appropriated to those funds in a calendar year by reason of the social security taxes paid in that year. If the railroads and their employees were directly a part of the social security system, the amounts so appropriated would be larger which, under the proposed formula, would increase the amount of the contributions out of the General Treasury. Under the financial interchange, the social security trust funds will subtract from the railroad retirement account an amount based upon the supposition that the railroad retirement account shared in the contributions, even if in fact it does not do so.

In effect, therefore, the social security system would be subsidized in part by the railroad retirement system. Moreover, the money thus transferred from the railroad retirement account to the social security trust funds would come entirely out of Tier II taxes (which at present are paid by the railroads) since all Tier I railroad retirement taxes are transferred to the social security trust funds under the financial interchange in any event. The staff of the Railroad Retirement Board has estimated that, over the first four calendar years, the loss to the railroad retirement account through the financial interchange will total about \$153 million. There is no justification for imposing such a drain upon the railroad retirement account regardless of its amount. Whatever may be the reasons or justifications for making contributions out of the General Treasury to the social security trust funds in times of high unemployment, they obviously have no application whatsoever to making such contributions out of the railroad retirement account.

Attached as Appendix B hereto is a proposed revision of Section 102 of HEW's bill which is intended to remedy this patent defect. It would include the Tier I (but not the Tier II) railroad retirement taxes appropriated to the railroad retirement account in the formula utilized to determine the amounts to be contributed, and would provide for contributions to be made to the railroad retirement account as well as to the social security trust funds.

We want to emphasize, however, that it is our understanding and intention that the amounts so transferred to the railroad retirement account would in turn be transferred from that account to the social security trust funds under the financial interchange. While there may be some reasons for assistance from the General Treasury in the financing of Tier II benefits, that matter should not be considered at this time or in connection with the pending legislation. Indeed, we have no fundamental objection to a provision which would transfer any contributions directly to the social security trust funds, rather than running them through the railroad retirement account, or which would simply provide in effect that the railroad retirement account shall not be affected by contributions made under Section 102 notwithstanding the financial interchange.

We have adopted the approach utilized in the attached proposed revision of Section 102 only because it is more consonant with the purposes of Section 102 as well as with the purposes of the financial interchange and the two-tier system. Railroad employees are part of the nation's work force and may be affected by unemployment as well as employees in other industries. And, Tier I of railroad retirement has been coordinated with social security, including the provision for the financial interchange, although maintained as part of a separate system. Hence, it seems logical to us to include Tier I railroad retirement taxes for purposes of determining the amounts to be contributed, and to utilize the established financial interchange in funneling any contributions resulting from such inclusion to the social security trust funds. But however it may be done, plainly Section 102 as proposed by HEW should be revised to make certain that the contributions to the trust funds in fact are made entirely from the General Treasury and that the railroad retirement account will not be adversely affected.

INDEXING OF SOCIAL SECURITY BENEFITS

Title II of HEW's bill is a complex provision which, as we understand, is intended to correct a serious flaw in the Social Security Act in that the level of benefits is automatically adjusted by formulae which couple the effects of both increases in the Consumer Price Index and increases in average earnings. This

results in benefit increases in excess of anything that could be justified by inflation, and in time (unless corrected) could lead to social security benefits alone that exceed, upon retirement, an employee's highest wage earnings. Since Tier I railroad retirement benefits also are adjusted automatically in conformity with adjustments in like social security benefits, this defect is applicable to Tier I of the railroad retirement system as well as to the social security system. And, it indirectly affects Tier II of the railroad retirement system to some extent, as in regard to survivor benefits. The Tier I survivor benefit is 100 percent of what social security would pay and Tier II is an additional 30 percent.

Consequently, the railroads support Title II of the bill submitted by HEW, which would "decouple" the automatic adjustment formulae and provide a means for adjusting or indexing social security benefits that is more closely attuned to the effects of inflation. No amendment of the Railroad Retirement Act is necessary, since under its present provisions Tier I benefits automatically will be adjusted as and when social security benefits are adjusted—however that is done. So, too, insofar as Tier II benefits are related to the level of Tier I (and thus of social security) benefits, that will continue to be true regardless of what that level may be.

ELIMINATION OF GENDER-BASED DISTINCTIONS

There are several instances in which the Social Security Act provides for the payment of benefits to females in circumstances in which benefits are not payable to males, such as where widowers but not widows of deceased employees are required to prove that they were financially dependent upon such employees. Some of those gender-based distinctions already have been held to be unconstitutional by the Supreme Court. The constitutional problem with such distinctions is that, while the Congress intended to provide benefits only to dependents, it presumed that women are dependent while requiring men to prove dependency. Since the presumption that women are usually dependent no longer accords with actual facts, the distinction has ceased to be constitutionally defensible. See, e.g., *Califano v. Goldfarb*, — U.S. —, 45 U.S.L.W. 4237, 4241-4242 (1977); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 643-644 (1975). Despite the fact that the Congress intended to pay the benefits only to dependents, however, the judicial remedy has been to strike the dependency test for males and require the payment of benefits to both sexes without proof of dependency.

Title III of the bill submitted by HEW would fulfill the original congressional intent by requiring both sexes to prove dependency where the statute now requires such proof by males, and to eliminate other gender-based distinctions by equalizing the circumstances under which benefits are paid to the two sexes. The railroads agree that that should be done, but unfortunately the proposed amendments to the Social Security Act would not eliminate similar gender-based distinctions in the Railroad Retirement Act even with respect to Tier I benefits. The Railroad Retirement Act independently specifies (in Section 2) the eligibility requirements for benefits payable under that Act, which requirements apply to both Tier I and Tier II benefits.

We have pointed out that the benefits as to which gender-based distinctions are made were introduced into the railroad retirement systems by 1946 and 1951 amendments which were patterned after, and justified by, similar provisions that previously had been added to the Social Security Act. One of those distinctions already has been held unconstitutional by the Supreme Court. *Kalina v. Railroad Retirement Board*, — U.S. —, 45 U.S.L.W. 3752 (1977), affirming per curiam the decision of the Sixth Circuit in that case, 541 F.2d 1204 (1976). Even apart from other considerations, therefore, it seems apparent that those distinctions should be eliminated along with the similar distinctions in the Social Security Act. Otherwise, benefits will be payable to a class of beneficiaries—non-dependent males and females—which was not intended either by the railroads and railroad unions or by the Congress. And, such non-dependents necessarily have other sources of income.

Moreover, if that is not done and the railroad retirement system is required by judicial decisions to pay benefits to both sexes without proof of dependency in circumstances where, by reason of the pending legislation, the social security system requires both sexes to prove dependency, the result will be very costly. Since benefits would be payable in circumstances where they would not be payable if the railroads and their employees were a part of the social security system, the railroad retirement account would not be reimbursed under the financial

interchange for the Tier I portion of those benefits, and the entire cost would have to be paid out of Tier II taxes. While we do not yet have firm figures, Railroad Retirement Board actuaries have estimated that the actuarial deficit in the railroad retirement account would be increased substantially. On the other hand, if the gender-based distinctions in the Railroad Retirement Act should be eliminated in accordance with the approach proposed in the pending legislation in regard to the Social Security Act, the actuarial deficit in the railroad retirement account would be reduced substantially.

There are four gender-based distinctions in the Railroad Retirement Act. Under Section 2(c) (3) (ii), 45 U.S.C. § 231a(c) (3) (ii), a husband of an employee must prove dependency in order to be eligible for a spouse benefit, while such proof is not required of a wife of an employee. Under Section 2(c) (1) (ii), 45 U.S.C. § 231a(c) (1) (ii), a wife who has the care of a dependent child may be eligible for a spouse benefit, but no benefit is provided for a husband who has the care of a dependent child. Under Section 2(d) (1) (i), 45 U.S.C. § 231a(d) (1) (i), a widower of a deceased employee must prove dependency to be eligible for a survivor's benefit, while such proof is not required of the widow of a deceased employee. And, under Section 2(d) (1) (ii), 45 U.S.C. § 231(a) (d) (1) (ii), a widow who has the care of a dependent child may be eligible for a survivor's benefit, but no benefit is provided for a widower who has the care of a dependent child.

Attached as Appendix C hereto is a proposed Title IV to be added to the pending legislation. Section 402 would amend the Railroad Retirement Act of 1974 so as to eliminate the two gender-based distinctions in regard to spouse benefits, and Section 403 would amend that Act so as to eliminate the two gender-based distinctions as to survivor benefits. With regard to the spouse and survivor benefits as to which the husband or widower is now required to prove dependency, but the wife or widow is not, both sexes would be required to prove dependency as HEW has proposed in regard to the comparable benefits under the Social Security Act. A dependency test, which is identical in substance to that proposed by HEW, is set forth in Section 404. With regard to the spouse and survivor benefits now afforded only to a wife or widow having the care of a dependent child, such benefits also would be afforded to a husband or widower having the care of a dependent child, just as HEW would afford comparable benefits to both sexes under the Social Security Act.

We note that under Section 407 those amendments would be made effective with respect to benefits payable after December 31, 1977. This is because the railroads and unions, in agreeing to propose the legislation enacted as the Railroad Retirement Act of 1974, also agreed that they would not propose or support future changes in that Act which would be effective before January 1, 1978. Section 407 also provides that the amendments would not affect those who are already receiving benefits under the existing provisions of the Act, and those who applied for such benefits prior to the enactment of the proposed legislation also would be subject to the existing requirements.

ADJUSTING THE FINANCIAL INTERCHANGE

The financial interchange between the railroad retirement and social security system is now made on a delayed basis. As a result, there is an 18-month lag in the transmittal to the railroad retirement account of moneys to which it is entitled under the financial interchange. While interest is paid by the social security trust funds for the period in which they hold those moneys, so that this delay does not significantly affect the actuarial deficit in the railroad retirement account, the delay is very significant with regard to the cash flow in that account and therefore with regard to the actuarial estimate as to when the account will be exhausted. Railroad Retirement Board actuaries have indicated that placing the financial interchange on an accrual or current basis will delay the estimated time at which the account will run out of money by about two years, from 1986 to 1988. On the other hand, the effect upon the cash flow in the social security trust funds would be relatively insignificant, because of the much larger volume of moneys that flow through those accounts. Placing the financial interchange on a current basis would not advance the date on which such funds would run out of money by more than a few days.

The bill proposed by the railroads and unions to restructure the railroad retirement system contained a provision which would have placed the financial inter-

change on a current basis, but that provision was not contained in the Railroad Retirement Act of 1974 as enacted by the Congress. The House Committee on Interstate and Foreign Commerce explained that provision and the reason for its elimination as follows (H. Rept. No. 93-1345, supra at 25) :

"Under the present law, funds are transferred each year between the railroad retirement program and the social security program so as to place the social security trust funds in the same position they would have been had railroad service been covered employment under the social security program * * *. In practice, the net transfer is from the social security program to the railroad program. These transfers are made on a delayed basis about 18 months after the railroad annuities and survivor benefits have been paid and include an amount to make up for the interest earnings that have been lost to the railroad fund as a result of the delay in payment.

"As introduced, H.R. 15301 would have modified the provision so that starting with fiscal year 1976 the transfers would have been made each month on a current estimated basis. In the course of the committee's consideration of the bill, representatives of the Social Security Administration informed the committee that while they had no objection in principle to the change proposed, it would come at an inopportune time. The current estimates of the costs of the social security cash benefits programs * * * indicate a close balance of income and outgo over the next few years and a significant long-range actuarial deficiency. As a result changes in social security financing will be needed. It is anticipated that following studies by the current Advisory Council on Social Security * * *, recommendations for changes in the financing of the social security program will be sent to the Congress.

"In recognition of the financial problems associated with the social security program, the committee has substituted for the provisions of the bill the provisions of present law which permit the transfers to be made on a delayed basis. It is anticipated, however, that further consideration will be given to a change of this nature after the Congress has had the opportunity to consider changes in the financing of the social security cash benefits program."

The Report of the Senate Committee on Labor and Public Welfare made the same explanation. S. Rept. No. 93-1163, supra at 25. Hence, the proposal to place the financial interchange on a current basis was not dropped because of some preceived lack of merit. Indeed, the Social Security Administration "had no objection in principle to the change proposed * * *." The proposal was dropped at the time because proposals to change the financing of the social security system to meet that system's financial problems were anticipated, and adjustment of the financial interchange could be considered more opportunely in connection with such changes.

Of course, the Congress is now considering changes in the financing of the social security trust funds, in connection with the bill proposed by HEW, so as to place the social security system on a sound financial basis. This appears to be the appropriate time, therefore, in which also to consider placing the financial interchange on a current basis. Section 405 of the Title IV which we propose be added to the bill (Appendix C hereto) would amend Section 7(c) (2) of the Railroad Retirement Act of 1974, 45 U.S.C. § 231f(c) (2), to accomplish that result. As so amended, that provision would read as it would have read if the joint railroad-union proposal for adjusting the financial interchange had not been dropped when the 1974 Act was enacted. Section 407 would make that adjustment effective with the fiscal year commencing October 1, 1978.

There can hardly be any doubts about the merits of this proposal. The money in question belongs to the railroad retirement account, and there is no justification for in effect requiring that account to make a forced loan to the social security trust funds for some 18 months. This is particularly so since those monies are very important to the cash flow of the railroad retirement account, while they are relatively insignificant to the much large social security trust funds. Hence, the railroads urge that the financial interchange now be placed on a current basis by adoption of the amendment that we have proposed.

CONCLUSION

We realize that the financial problems of the social security system are serious, and that solution of those problems is difficult. Several aspects of the

legislation proposed by HEW are commendable, but in our view sufficient consideration has not been given to the problems of the railroads and to the effects of the proposed legislation upon the railroad retirement system. We have attempted to describe the resulting deficiencies in the proposed legislation, and to suggest revisions or additions thereto that would provide a remedy. If those suggestions are adopted by the Congress, the legislation will provide a fairer and more equitable tax burden and will preserve the relationship between the railroad retirement and social security systems which the Congress intended, when it revised the Railroad Retirement Tax Act in 1973 and enacted the Railroad Retirement Act of 1974, so as clearly to establish a two tier system of railroad retirement taxes and benefits: the first tier providing for taxes and benefits that are geared to social security taxes and benefits and the second tier providing for those taxes and benefits that are in excess of those provided by social security and which in essence constitute a company pension plan for the railroad industry.

On behalf of the railroads which we represent, we want to express our appreciation to the Committee for affording us this opportunity to state the railroads' position in regard to legislation that is of large importance to the railroad industry as well as to many others. We urge, on behalf of those railroads, that the legislation be revised in the manner which we have suggested. This concludes our remarks, subject to any questions you may have.

APPENDIX A. RAILROADS' PROPOSED REVISION OF SECTION 103 OF H.R. 8218

(Added language is in italic; deleted language is bracketed)

APPLICATION OF EMPLOYER EXCISE TAX TO WAGES IN EXCESS OF CONTRIBUTION AND BENEFIT BASE

SECTION 103. (a) Section 230(c) is amended by adding at the end the following sentence: "For purposes of the employer tax liability under section 3111 of the Internal Revenue Code of 1954 and section 3221(b) in the case of railroad employment, the contribution and benefit base referred to in paragraph (1) of section 3121(a) of the Internal Revenue Code of 1954 is deemed to be \$23,400 and \$37,500 with respect to remuneration paid during calendar years 1979 and 1980, respectively."

(b) (1) Section 3111(a) and 3111(b) of the Internal Revenue Code of 1954 are each amended by inserting ", low regarding without of paragraph (1) thereof" after "as defined in section 3121(a)".

(2) Section 3221(a) of the Code is amended by inserting "[, but without regard to paragraph (1) of section 3121(a)," after "as defined in section 3121" each time it appears.] *at the end the following sentence: "For purposes of the additional rate of tax imposed by this subsection, paragraph (1) of the definition of 'wages' in section 3121(a) shall be disregarded."*

(3) Section 3121(a) of the Code is amended by inserting immediately after the number of designating paragraph (1) the following: "other than for purposes of sections 3111 and 3221(b)".

(4) This subsection is effective with respect to remuneration paid in any calendar year after 1980.

APPENDIX B. RAILROADS PROPOSED REVISION OF SECTION 102 OF H.R. 8218

(Added language is italic)

CONTRIBUTIONS FROM THE GENERAL FUND OF THE TREASURY TO THE FEDERAL OLD-AGE AND SURVIVORS, DISABILITY, AND HOSPITAL INSURANCE TRUST FUNDS, AND THE RAILROAD RETIREMENT ACCOUNT, FOR YEARS OF EXCEPTIONALLY HIGH UNEMPLOYMENT

SEC. 102. Section 201 is amended by adding at the end the following new subsection:

"(j) (1) On or before July 1 of each calendar year immediately succeeding a calendar year in which the average rate of unemployment, as determined by the Bureau of Labor Statistics of the Department of Labor, had exceeded 6 percent, the Secretary of the Treasury shall transfer to the Federal Old-Age and Sur-

vivors Trust Fund, the Federal Disability Insurance Trust Fund, and (as established by section 1817(a)) the Federal Hospital Insurance Trust Fund, and (as established by section 15(a) of the Railroad Retirement Act of 1974) the Railroad Retirement Account, an amount computed in accordance with paragraph (2), and apportioned among the Funds and Account in accordance with paragraph (3), subject to the provisions of paragraph (4).

"(2) Subject to paragraph (4), the amount to be transferred under paragraph (1) in a calendar year shall be the product of—

"(A) an amount equal to the sum of (i) the amounts appropriated in the preceding calendar year to the Federal Old-Age and Survivors Insurance Trust Fund under subsection (a), the Federal Disability Insurance Trust Fund under subsection (b), and the Federal Hospital Insurance Trust Fund under section 1817(a); and (ii) the amounts deposited in those Trust Funds in the preceding calendar year under section 218(h); and (iii) the amounts appropriated in the preceding calendar year to the Railroad Retirement Account under section 15(a) of the Railroad Retirement Act of 1974; and

"(B) three times the number of whole [one-term]¹ one-tenth percentage points by which, for that preceding calendar year, the average rate of unemployment exceeded 6 percent, divided by 1000.

"(3) Subject to paragraph (4), the sum allocated to each trust fund or account in any calendar year from the amount transferred under the preceding paragraph, shall bear the same proportion to the sum of (i) the amount transferred under that paragraph in that year as the amount appropriated to that trust fund or account by subsections (a) or (b) of this section, or subsection (a) of section 1817, or subsection (a) of section 15 of the Railroad Retirement Act of 1974, as may be applicable, and (ii) the amount deposited in that trust fund under section 218(h), bears to the entire amount appropriated by those subsections to those trust funds and to that account and deposited in those trust funds, under section 218(h), in the preceding calendar year.

"(4) In determining for purposes of this subsection the amount appropriated in a calendar year to the Railroad Retirement Account under section 15(a) of the Railroad Retirement Act of 1974, the actual amount so appropriated shall be reduced by an amount equal to the amounts covered into the Treasury (minus refunds) during such calendar year under section 3221(a) of the Internal Revenue Code of 1954.

"(5) This subsection is deemed to become effective January 1, 1976. Any transfer under this subsection that would thereby have been made in calendar years 1976 or 1977, with respect to the rate of unemployment in calendar years 1975 or 1976, respectively, shall be made in three equal installments, the first within 30 days after the enactment of this subsection, the second no later than June 30, 1979, and the third no later than June 30, 1980. No transfer may be made under this subsection with respect to the rate of unemployment for any calendar year after 1982."

APPENDIX C. RAILROADS' PROPOSED NEW TITLE IV TO BE ADDED TO H.R. 8218

TITLE IV—AMENDMENTS OF THE RAILROAD RETIREMENT ACT OF 1974

SHORT TITLE OF TITLE IV

SEC. 401. This title may be cited as the "Railroad Retirement Equal Rights and Financial Interchange Amendments of 1977".

SPOUSE BENEFITS

SEC. 402. (a) Section 2(c)(1)(ii) is amended by deleting "in the case of a wife."; by changing "her care" to read "his or her care"; and by changing "(individually or jointly with her husband)" to read "(individually or jointly with his wife or her husband)".

(b) Section 2(c)(3) is amended by striking the last clause thereof and inserting in lieu thereof "and (ii) was dependent upon such annuitant, as defined in subsection (i)."

¹ This appears to be a typographical error in H.R. 8218 as printed.

SURVIVOR BENEFITS

SEC. 403. (a) Section 2(d)(1)(i) is amended by striking the material appearing after "subdivision (2)," and by substituting in lieu thereof "and who was dependent upon the deceased employee, as defined in subsection (i);"

(b) Section 2(d)(1)(ii) is amended by inserting "or widower (as defined in section 216(g) and (k) of the Social Security Act)" immediately before "of such a deceased employee"; and by changing "her care" to read "her or his care".

(c) Section 2(d)(2) is amended by inserting "or widower" after "widow" each time it appears in clause (B); and by changing "she" to read "she or he" in clause (B).

DEPENDENCY OF A SPOUSE

SEC. 404. Section 2 is amended by adding at the end thereof the following new subsection:

"(i) For purposes of sections 2(c)(3) and 2(d)(1)(i), a person was dependent upon the individual—"such annuitant" or "the deceased employee"—referred to in such sections (1) if such person's income (as defined in regulations of the Board) was less than such individual's income (as defined in regulations of the Board) in the three years immediately preceding (A) the month such individual became entitled to an annuity under subsection a(1), or, if such individual had a period of disability which did not end prior to the month in which he or she became so entitled, the month such period began or the month he or she became so entitled, or (B) in the case of such a person who survives such an individual, the month specified in subparagraph (A) of this paragraph or the month of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he or she died, the month such period began or the month of his or her death, and (2) such person files proof of such dependency (according to regulations of the Board) within two years after the applicable month specified in paragraph (1) of this subsection. In the case of a person who marries an individual in the applicable 3-year period specified in the preceding sentence, such period shall instead be from the date of such marriage to the end of such 3-year period."

FINANCIAL INTERCHANGE

SEC. 405. Section 7(c)(2) is amended (a) by striking the first clause of the first sentence and inserting in lieu thereof "Prior to the close of the fiscal year ending September 30, 1978,"; (b) by inserting after "would" and before "place" in the first sentence, as of the end of each month of the following fiscal year,"; and (c) by striking the second, third, fourth and fifth sentences and inserting in lieu thereof the following: "Such determination with respect to each such Trust Fund shall be made, on an estimated basis subject to later adjustment (on the basis of actual experience), by the close of the fiscal year ending prior to the fiscal year to which it relates. If for any month any amount is to be added to any such Trust Fund, the Board shall, within ten days after the end of the month, certify such amount to the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If for any month any amount is to be subtracted from any such Trust Fund, the Secretary of Health, Education, and Welfare shall, within ten days after the end of the month, certify such amount to the Secretary of the Treasury for transfer from such Trust Fund to the Railroad Retirement Account. Any amount so certified shall further include interest (at the rate determined in subdivision (3) for the month under consideration) payable from the close of such month until the date of certification."

SEC. 406. Section 7(c)(3) is amended (a) by striking "for any fiscal year," and inserting in lieu thereof "for any month,"; and (b) by striking "computed as of May 31 preceding the close of such fiscal year," and inserting in lieu thereof "computed as of the end of the month preceding the close of such month,".

EFFECTIVE DATES

SEC. 407. The amendments made by sections 402 through 404 of this title shall become effective with respect to benefits under the Railroad Retirement Act of 1974 for months following December 31, 1977, except that such amendments shall not apply to an individual who receives benefits under sections 2(c) or 2(d) of that Act for the month prior to January 1, 1978, or who has applied for benefits under sections 2(c) or 2(d) of that Act prior to the date of enactment of this Act,

until such time as he or she is not entitled to any such benefits under such sections for a month. The amendments made by sections 405 and 406 of this title shall become effective with respect to the fiscal year commencing October 1, 1978 and each succeeding fiscal year.

Mr. PICKLE. Mr. Dempsey—well, Mr. Hopkins, do you want to add anything or do you concur generally with his statement?

Mr. HOPKINS. Yes; I concur totally.

Mr. PICKLE. Totally.

Mr. Dempsey, as you would know better than anybody in this room, your testimony is probably the most comprehensive testimony that we have had given to us, mainly because of this interchange between the railroad retirement system and the social security system.

The problem we have before us is financing the social security system. This is our primary concern because it comes under the jurisdiction of the Ways and Means Committee because of the tax involved with respect to the social security program, medicare and medicaid and the parts of it. Part of your problem is really an inheritance from matters that normally go to the Interstate and Foreign Commerce Committee and over which they have basic jurisdiction.

Mr. DEMPSEY. Yes.

Mr. PICKLE. I don't know how we would handle it, but I am certain that our committee and the Interstate and Foreign Commerce Committee must have an interchange of views about the problem, an interchange of the interchange.

And I recognize that there is an added problem involved here because of the tier 1 and tier 2. If we just had the tier 1, that would be simple.

Mr. DEMPSEY. That's right.

Mr. PICKLE. It would be a simple interchange, but with tier 2 you not only have social security, you have a pension-like aspect to it. I don't know how to handle it. I see the basic problem, but not as clearly as you might want me to, because it gets terribly involved.

When we inherited railroad retirement, we had hoped we could have just a clear exchange. But it was also complicated and it was in such bad financial shape. We already bailed you out twice with general revenues, which is a bad precedent.

It looks like we are going to be faced with the same thing again. So you don't come before some of us in a happily receptive manner, because we remember this problem. But it is a real problem and we have to wrestle with it to see what best we can do.

Mr. DEMPSEY. Of course, I would like to comment that had the—the easiest thing of all from an administrative point of view, from the Congress point of view, would be to wipe out tier 1 and have railroad employees part of the social security system, period.

Then we would have what is now tier 2 as the railroad retirement plan. That could be administered by the railroads. For a variety of reasons, having to do with the way our employees, for example, look at matters and the way the Congress looks at matters in some respects, we chose not to go quite that far.

But really what we have is essentially that. So I suggest that if you will look at this problem and say, all right, tier 1 is social security and tier 2 is company pension plan, what we do then for social security

one way or the other ought to apply in precisely the same way to tier 1 but not to tier 2 because that is not a social security problem.

There are two matters directly within the jurisdiction of the committee, those are the first two that I mentioned, the increase in taxes should not flow through to tier 2. Whatever is done to tier 1 ought to be the same as with social security.

Mr. PICKLE. There is logic to that.

Mr. DEMPSEY. The other is to remedy what I am sure is an inadvertent drafting error, that would have the railroad retirement system subsidizing the social security when General Treasury subsidizes social security. Those are the two matters within the jurisdiction of the committee that I know of.

Mr. PICKLE. Mr. Jacobs?

Mr. JACOBS. I believe your testimony has been very thorough, Mr. Dempsey. I am grateful for it. I believe I comprehend the two matters which one might assume were inadvertently caused by the proposal of the administration. I wonder, beyond that with respect to tier 1, sometimes known as social security, have you gentlemen an opinion about the Fraser/Keys bill? Did you hear the testimony this morning?

Mr. DEMPSEY. We heard the testimony. I found it fascinating, but I have no views on it. I am not an expert in that area at all.

Mr. HOPKINS. Nor would I. I would not be in a position to offer comments at this point.

Mr. JACOBS. It makes sense to me, but it frightens me when a radical proposal makes sense, because I fear I have been overlooking something.

Mr. PICKLE. Off the record.

[Discussion off the record.]

Mr. PICKLE. Well, we thank you both for your testimony. It is technical, as I have said, and it addresses a genuine problem.

I am glad you gave us this information and we will study it and be back in touch with you and with the Interstate and Foreign Commerce Committee.

Mr. DEMPSEY. Thank you very much.

Mr. PICKLE. Thank you very much.

Mr. HOPKINS. We appreciate it.

Mr. PICKLE. Next we will hear from Mr. and Mrs. Robert Reilly, West Haven, Conn. You may proceed with your testimony.

STATEMENT OF MR. AND MRS. ROBERT W. REILLY, WEST HAVEN, CONN.

Mr. REILLY. Honorable chairman, James A. Burke and the other distinguished Congressmen sitting in on this hearing; I, Robert W. Reilly and my wife Shirley, are here to talk to you today about the long overdue reform that is needed for the social security system. While there are many areas to talk about, we plan to limit our discussion to the areas of discrimination against working wives and unfair treatment of widows.

We appreciate very much having the opportunity to appear before this House of Representatives Ways and Means Subcommittee on

Social Security; not only for our own benefit, but also the many concerned and frustrated people throughout the United States.

As a matter of information, I would like to point out that my wife and I are laypersons that do not claim to be experts on all the rights and wrongs of the social security system. We are not here for the sake of complaining, but instead, we are here to offer what we feel is good, sound, constructive criticism on a few areas of the social security system.

GENERAL INFORMATION

Back in the good old days of 1935, a man could support his family without having to have his wife work, but times have changed. Now, due to the present economy, many wives are required to work to help provide the necessary financial assistance for their families.

We know that the social security system was established to provide for protection against a loss of earnings, due to a worker's retirement because of age, and that the protection was in the form of supplemental financial assistance.

The program has since grown to include a multitude of benefit provisions and most people appreciate the fact that it has become a very complex program both to administer and control. The cost is soaring upward, like a rocket headed for the moon, and the administrative entanglements have become so involved, that it is difficult to foresee all the unfair conditions that have been created.

Yet, it would seem to be self-evident that the social security system should be free of unfairness, inequities, or discrimination against any population group. This should include retirement benefits for a man and wife—where they both worked—and for a widow, or widower, supporting a family where either had to work to supplement the social security benefits that are allowed.

I would like to quote former Congresswoman Martha Griffiths, who once said:

The income security programs of this Nation were designed for a land of male and female stereotypes, a land where all men were breadwinners and all women were wives or widows; where men provided necessary income for their families, and women did not; in other words where all the men supported all the women. As we know, this view never matched reality, and today it is further than ever from the truth.

As Martha Griffiths points out, the potential role of women in the labor market was inadequately recognized in 1935, when Congress enacted the social security legislation. Now, 42 years later, we are faced with a social security system that has gross inequities and in some cases provided for outright discrimination against certain groups. One of those groups is the working wives and yet without their social security taxation, the system's financial stability would be pushed to the brink of disaster.

An overwhelming 90 percent of all women work outside the home during some part of their lives, and more than 45 percent of today's paid work force consists of women. A full 60 percent of all working women are married and supplementing the husband's income.

Since the 1940 census, the proportion of working women in every age group has soared. Among women 35 to 44, it has doubled; among

women 45 to 64 it has increased $21\frac{1}{2}$ times; and among women over 65 it has quadrupled.

And yet over the past 42 years, not one noticeable change has been made to the social security system to take into account the changing role of women.

The people realize that the social security system is presently experiencing financial operating problems; so it is not necessary to have this pointed out to them, as a reason for not bringing about corrective action on the inequities.

The people are willing to contribute their fair share to help support the social security system and its worthy benefit provisions. They are very much aware of the fact that many families and individuals would not be able to survive without such financial assistance. The humble plea of the people is simply to have new guidelines established that would be fair and free of discrimination to all the people.

In contrast to the thousands of people who spoke to us and were in favor of our stand, we only had four people tell us that they disagreed with our cause. One person could give no reason, one person said the women should stay at home and not be out working, one person said "anyone that wants to work should then pay the social security tax; like it was a 'right to work tax,' and accept whatever is given to them without complaining." And the other person disagreed because of the financial plight of the social security system and he felt additional money was not available.

My wife and I are not going to make any major suggestions on how to resolve the financial plight of the social security system, but would like to make some suggestions of a general nature.

In order to provide for additional revenue to help overcome the inequities that apply to married couples, we suggest that the maximum annual taxable earnings amount be increased for all married couples, and the maximum amount should be on a combined basis, whether one or both spouses are working. The Congress should study the situation to determine the desirable maximum amount that should apply.

In all fairness to the single persons, we suggest that they be taxed on a lesser amount basis than married couples.

We disagree with the idea of taxing just the business firms on 100 percent of the employees' wages, because the business firms will simply adjust by cutting back on employees and holding off on their employing new people and this will eventually worsen the employment situation.

In order to allow for fair taxation—in accordance with the benefits that are allowed—we suggest that separate taxation rates be established for single persons, married man and wife teams with both working, and married man and wife teams with one working. In this day and age of the magic computer, we are sure that a taxation system could be administered on this basis.

Note: I would like to point out that the people who signed our petitions are not necessarily in agreement with these suggestions, their signing of the petition was solely to have Congress take action on the inequity and discrimination involved with the retirement benefit matter.

ACTION BY CONCERNED CITIZENS

Before I begin to explain how we became involved in this issue, I would like to stress that we, and the many people we have talked to, do not want to take anything away from the nonworking wives. We feel that they should continue to be eligible for one-half of their husband's retirement benefits. But as you might expect, the people feel very strongly that the combined taxation of a husband and wife should entitle them to a proportionately higher retirement pension package.

It was about 7 years ago that my wife and I became aware of the fact that a working wife has to choose between taking social security retirement benefits on her own earnings or else taking one-half of her husband's benefits. Since my wife's annual earnings have been relatively low, it was quite evident to us that she would end up taking one-half of her husband's benefits, and she would then end up getting nothing for all the social security taxes that she will have paid. In so doing, she would get no better treatment than a nonworking wife that has never paid taxes. Needless to say, this stood out like a sore thumb and we recognized it as an inequity that needed correction. After further consideration, we considered it to be an outright discrimination against the families where the wife has to work.

Every year when we make out our income tax return and look at the amount of social security taxes that Mrs. Reilly has to pay: we get upset all over again and start writing to our representatives in Washington.

We promptly began writing to our representatives in Washington 7 years ago and have continued to do so on an annual basis. Over the years, we have expressed our concerns to Presidents Nixon, Ford, and Carter as well as numerous Senators and Congressmen in Washington, and we never received any answers that indicated positive action was being considered.

We were reluctant to pursue a strong course of action because of the old but true saying that "You can't beat city hall," however, we continued to speak out on the issue.

In January of 1977, a reporter for the New Haven Register interviewed my wife and I, and a lengthy article was printed in the newspaper. The response was tremendous, as we received many letters and telephone calls encouraging us to carry the ball to do something about the unjust workings of the social security system.

Accepting the challenge, we held three meetings, that were open to the public, in the New Haven area and the people were all in agreement with the unfair social security pension benefits that working men and women are confronted with. We plan to continue such meetings in September and will extend the coverage to New York and Massachusetts.

For the most part, retired people are aware of the retirement pension guidelines, whereas, 90 percent of the nonretired people are not aware of the requirements that discriminate against families where the man and wife both worked.

In our meetings with retired people, we find that many of them are frustrated and yet are reluctant to speak out on the issue because they

do not want to hurt their relationship with friends where the wife never worked.

We initiated a petition campaign and will present copies of the petition to Congressman James A. Burke, chairman of this committee. The petitions consist of about 1,200 signatures that were accumulated with very little effort. We plan to continue the petition campaign and will attempt to make contacts in other States to broaden the petition coverage.

I would like to acknowledge that all the signatures do not have corresponding addresses due to an oversight in not requesting such on the petition form. The petition, in the future, will request the address be listed.

We have forwarded a resolution to State Senator Patrick A. Madden for him to submit to the Connecticut State Senate. We have requested that the State senate act upon it with the intent of forwarding it to the U.S. Congress. The resolution reads as follows:

WORKING WIVES AND SOCIAL SECURITY

Whereas working wives have traditionally been victimized by inequities in the Social Security system; and

Whereas those inequities have reflected the discriminations which working wives have suffered in previous years in the form of retirement benefits; and

Whereas working wives are required to pay the same social security taxes as all other citizens; now therefore be

Resolved by many concerned citizens, That working wives be given the option of either being exempt from social security taxation; or else being entitled to proportionately higher retirement benefits than those wives who have not been subject to social security taxation.

We have had some discussions with representatives of the National Council for the Aging in Washington, D.C., and plan to seek their support at the next national convention.

We have been invited to speak at the next State meeting of the Junior Women's Club of Connecticut in September, and from all indications, the Connecticut chapter will consider seeking the support of the National Organization to Support the Cause Against Discrimination of Working Women in Regard to Social Security Retirement Benefits.

We had a group meeting with Congressman Robert N. Giaimo about 5 weeks ago and his office later notified us about this hearing. We then exercised some fast footwork and with the able assistance of Grace Kagan, here in Washington, we were able to make the necessary arrangements to be at this hearing today.

On behalf of all the people who have contacted us by telephone, letter or conversation on the avenue, we sincerely hope that the Congress will thoroughly review the social security system and correct the inequities in the very near future.

Many of today's elderly people are presently confronted with the inequities, and these people have lived through an era when high wages did not prevail. Consequently, their average annual wages were rather low, so their retirement benefits are also low. On behalf of these people, we urge you to take quick action on the matter, because time is running out for them.

My wife and I are in our early fifties and headed into the home-stretch of life, and we sincerely hope that the conditions will be cor-

rected before we also are too old and helpless to fight the battle any longer.

DISCRIMINATION AGAINST WORKING WIVES

The present retirement pension arrangement discriminates against the family where the wife has to work. In many cases, nonworking wives will get higher monthly pension allowances than working wives who have paid social security taxes. This has been verified to us by actual cases of people presently confronted with the unfair conditions.

In many cases, the working wife takes the retirement benefits under her husband's coverage and therefore receives nothing for all the money she has paid in taxes. Also, by doing this, she receives less then, or about the same monetary benefits, as a wife that never worked or paid taxes.

Working wives are required to pay the same social security taxes as all other workers, therefore, they should either be exempt from taxation or they should be given fair treatment for their money. Such fair treatment would be in the form of proportionately higher retirement benefits than those wives who have not worked and been subject to taxation.

NOTE.—As a matter of information, the reference to a nonworking wife is intended to mean the following; a wife that has never worked or has worked an insufficient amount of time to qualify for benefits on her own earnings.

It is common to have nonworking wives getting one-half of their husband's benefits that amounts to approximately \$213 per month. This would be on the basis of the husband presently earning \$16,500, or more, per year and having paid the maximum amount of taxes for the required number of years. His average earnings would be about \$8,000 per year, at the time of retirement.

In comparison, if a working wife had an average income around \$4,000 per year, and her husband had an average income above \$4,000 per year, their combined taxation could be higher than the husband's with the nonworking wife and yet the retirement benefits could be less.

The retirement benefit inequity prevails whenever a man or wife has a low income and they both work. Under these conditions, the one with the low income has to choose between their own benefits or else taking one-half of their spouse's benefits. The combined benefit package is about the same, and sometimes less, then the package allowed to a husband and nonworking wife, and creates the situation where the working man and wife end up with one of them not getting any benefits for all the taxes they paid. It is a case of discrimination to have conditions, where certain groups of people are paying more in taxes and getting less in monetary return than their equal counterparts.

As an example, I would like to use an actual situation of a man and wife from Naugatuck, Conn. The man presently earns \$11,600 per year and the wife earns \$10,400. Their combined annual wages on which social security taxation is based is \$22,000, and this compares to a man—with a nonworking wife—who earns \$16,500 or more. The difference is \$332 per year more in actual taxes paid in behalf of the working man and wife, and this would have prevailed on a continuing basis over the years.

The Naugatuck woman has an average annual earnings of \$4,000 that is based on an 18-year period, and her husband's average is \$4,800 based on a 19-year period. Their monthly social security benefits are

based upon such average earnings and this qualifies them for benefits of \$262, and \$297, or a combined amount of \$557.

The man with the nonworking wife has an annual earnings of \$8,000, which qualifies him for \$128 and his wife for—one-half—\$214 which gives them a total of \$642.

The previous examples prove how it is possible to pay more and receive less, and this is typical of many situations that exist today.

Sometimes the reverse conditions prevail and the man is discriminated against. This happens when the woman's earnings are higher than the man's.

Some of the inequities are defined in the working paper that was prepared by the Task Force on Women and Social Security for the use of the Special Committee On Aging, U.S. Senate, October 1975. In the conclusion of the working paper, the task force acknowledged that they did not fully appreciate the number of questions that were associated with problems of women and social security.

The findings and recommendations of the "working paper" were to be discussed at hearings of the Senate Special Committee on Aging, in early 1976, and we have no information on the outcome of the hearings.

There has been some talk of nonworking housewives seeking additional social security benefits—other than retirement—on the basis that they consider their household duties equal to working at a wage-paying job. We have but one commonsense answer to this, and that is: if that view is accepted, then the working wife evidently has two jobs, and whatever benefits the nonworking wife receives, then the working wife should receive double.

The people feel it would be fair to allow a working wife to be eligible for 40 percent of her husband's benefits, plus her own benefits, with a maximum amount not to exceed the highest maximum amount allowed to one person. Otherwise, the working wife should be exempt from taxation.

CONTACT WITH REPRESENTATIVES

Although many persons have sent correspondence to their representatives in Washington pointing out the various inequities that prevail, our representatives never seem to get the message loud and clear. It must be that age-old problem of not being able to see the forest because of the trees. Most of the people voicing such comments all seem to get similar answers to their correspondence, and the answers simply define the various social security benefits and neglect to relate to the questions that are asked.

In most cases, the people are well aware of the benefits that are available and their communication messages are in regard to inequities that need corrective action.

Most of the correspondence from our representatives in Washington, including Thomas C. Parrott, Associate Commissioner for External Affairs, simply refers to the advantages that a working wife has over a nonworking wife. They are as follows:

First. Disability protection before retirement age.

Second. At age 62, she can receive retirement benefits on her own earnings, before her husband retires.

Third. If she becomes disabled or dies, her children can receive benefits up to age 22, providing they are attending school.

Fourth. A death benefit of \$250 to the survivors.

The working wives appreciate such benefits, but the vast majority never get to use them, in comparison to those who live healthy lives to retirement age.

After a working wife reaches the age of 50, her children are usually too old to qualify for benefits on a death or disability basis.

Most of the working wives—with low earnings—would like to be exempt from social security taxation because they know that they will be taking the retirement benefits from the husband's benefits and they will have to die or become totally disabled to receive some monetary benefits for all the taxes they have paid. They would gladly forgo the benefits that presently apply, in order to be exempt from taxation.

For instance, in the case of my wife and I, she pays \$500 in social security taxes per year on a salary of \$8,300, and when she retires in 15 years she will have paid a total of \$15,000. It makes us feel extremely discouraged to know that she will never receive a penny of it, unless she dies or becomes totally disabled.

About 99 percent of the people have told my wife and me that it is foolish for us to go to the expense of making this trip to Washington, because they feel the response will be the same as we get in our letters. We have more faith in our Government, however, and we hope that we can prove that the people are wrong, and that our message will be given sincere consideration by the Congress and acted upon accordingly.

UNFAIR TREATMENT OF WIDOWS AND WIDOWERS

While pursuing our cause on working wives and social security retirement pensions, we came in contact with numerous widows who claimed that they had to work to supplement the survivors benefits that were allowed. In most cases, they had children and it was easy to visualize the rough times that they had. The problem prevails when the widow works and earns more than \$3,000. The Government then takes back one of her hard-earned dollars for every two that she has earned.

It is obvious in today's economy that widows will have a very hard time trying to raise children, not only physically and spiritually but also financially. Under these conditions, the money earned in wages is required to keep a family together, and it is very unfair to take it back from them.

We promised the people that we would convey their message to the Members of the Congress if and when, we had such an opportunity to do so. For this reason, their request is included in our presentation.

Many of the widows have been writing to their Representatives in Washington, but they have not received any encouraging word to indicate that some positive action is forthcoming. The earned income limi-

tation is hard enough for the retired people to take, but, in the case of surviving widows, it is blatantly unfair.

In other areas, we feel there is a need for rigid controls of survivors' benefits so that the person—who has to work—is not discriminated against by people who own business firms and can manipulate their payrolls to conceal the wages of family members. The average person is limited on the amount of earnings in wages, whereas the people owning business firms can limit the survivors pay so that it does not conflict with the maximum social security benefits that are allowed.

Some of the people have also suggested that the same flat benefit amounts be established for all surviving spouses and/or children, and that the benefits not be in accordance with the working persons wages. If fairness is to prevail, the people should all be treated equally under such conditions, and we concur with this thinking.

CONCLUSION

Since we were not able to get any positive action on social security matters by communicating with our Representatives in Washington in writing, my wife and I felt that we should personally convey our message directly to the Congress at the Capitol. We also carry with us the hopes of thousands of people who are anxiously awaiting action on long overdue reform of the social security system. The people hope that the existing House of Representatives bill 3247 will provide for the necessary reform.

Sometime ago, the Congress enacted a law to provide for an affirmative action program in regard to fairness and nondiscrimination requirements for equal rights and opportunity of employment.

Today, the people would like to see such equal rights treatment applied to the social security system and the workings of the benefit provisions.

Before we conclude, we would like to ask each and every member of this hearing panel the following questions:

1. Are the working women discriminated against in regard to social security retirement benefits?

2. Does the limited earnings requirement present an unfair condition for widows, who are working to help finance the upbringing of their children?

The people have high hopes that our representatives in Washington will be able to handle the situation and correct the problems of inequities, discriminations and unfair conditions, before the people have to take the problems to the courts of our land.

RECOMMENDATIONS

We strongly urge the Congress to take action on the following recommendations:

1. Eliminate the discrimination against families (where both the man and wife work) by allowing them to be taxed on a combined basis, where the total amount is not more than the maximum amount that is allowed to one worker.

Or else allow them to be entitled to proportionately higher retirement benefits than those families where only the man or wife works. The working wife should be allowed 40 percent of her husband's bene-

fits, plus the benefits that she is allowed under her own earnings, with a maximum amount not to exceed the highest maximum that is allowed for one worker.

2. Eliminate the unfair treatment of widows by removing the maximum earnings limitations or else raising the limitations substantially.

3. Provide additional financing to support reform of the Social Security System by means of increasing the maximum annual earnings amount on which wages are taxed. This should be done on a basis where the maximum earnings should be on a combined basis for married couples, whether one or both spouses work. Single persons should be taxed a lesser amount. Controls should also be included to insure the proper taxation of persons employed in family owned business operations.

4. The benefit allowances should be in accordance with specific flat amounts that will be equal for all the people in all the various population groups, instead of being in accordance with the amount of a person's wages.

MANY THANKS

On behalf of my wife and I, and all the people we represent, we extend our sincere thanks to the members of the panel for their time and attention. We greatly appreciate the opportunity to express ourselves at this hearing on the social security system.

Mr. PICKLE. Thank you, Mr. and Mrs. Reilly. With that, the subcommittee will stand adjourned until 10 o'clock in the morning in room 210, Cannon Building.

[Whereupon, at 3:06 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Friday, July 22, 1977, in room 210, Cannon House Office Building.]

[The following was submitted for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 27, 1977.

Hon. JAMES A. BURKE,

Chairman, Social Security Subcommittee, Longworth House Office Building.

DEAR MR. CHAIRMAN: There has been considerable concern expressed over the long and short term stability of various Social Security Trust Funds. The importance of a viable Social Security System is, indeed, a critical national issue and the Subcommittee's initiative to hold detailed, wide-ranging public hearings in this area shows great wisdom and compassion. Clearly, the complex nature of these issues will present the distinguished Chairman and Members of the Subcommittee on Social Security with a difficult and time consuming task. I am confident that the great collective knowledge of the Subcommittee will work its will on the Administration's proposal and produce meaningful reform in the current Social Security System.

One of the most important areas that will be addressed is the program's financing. In this regard, I believe it is essential that, regardless of the specific remedy recommended, the end result must be one which restores the faith and trust of the American people in the stability of the program's future. Our Senior citizens and the thousands of people disabled by injury or poor health have paid for their social security insurance benefits throughout their working lives. This is not a welfare program. Every working American has the right to expect fair and equal participation in these benefits when their working days are over.

While most Americans are greatly concerned about the future stability of our Social Security System, relatively few individual citizens have taken the time and effort to look at the problem and offer concrete proposals as to how the sys-

tem can be improved. A notable exception to this general situation is a valued constituent, Mr. A. Van Hooijdonk from Ormond Beach, Florida. Mr. Van Hooijdonk has devoted considerable time and effort over the past several years to developing a proposal which he feels will restore the people's faith in our Social Security System. While he recognizes his effort may not address all aspects of the problem, he does feel the key feature of his proposal, a 1% Federal Old Age Tax, is a fundamental reform which will have an immediate positive impact on restoring the faith of the American people in the long term stability of the Social Security System.

Furthermore, Mr. Van Hooijdonk, in recognizing the large number of witnesses who desire to be heard in the brief time available, has submitted his proposal for consideration and inclusion in the Hearing Report. In so doing, he has volunteered to make a personal appearance, at his own expense, should the Members desire additional information or clarification of his proposal.

In this spirit, I respectfully call the Subcommittee's attention to the attached proposal and urgently request that the Chairman give thorough consideration to Mr. Van Hooijdonk's proposal and offer assistance.

With warm personal regards,

Sincerely,

BILL CHAPPELL, M.C.

STATEMENT OF A. VAN HOOIJDONK, ORMOND BEACH, FLA.

To the People of the United States who would like to see everybody back to work, old people taken care of, and no more welfare or food stamps for the old people.

My name is A. Van Hooijdonk and my address is 1929 Myrtle Jo Drive, Ormond Beach, Florida 32074.

This is not a paper from Utopia, but a simple remedy for the elderly. I proposed this plan to the Congressmen but so far they have been lax in doing anything about it. My simple remedy is this, we would like to see the old people over 65 years of age have a minimum income of \$250 per month per person. In other words, husband and wife would collect \$500 a month, but they would get individual checks of \$250 per person. No discrimination in color, creed, man or woman.

I would like to see a one percent (1%) old-age tax on everything we do and sell in the United States or to foreign countries. In other words, a one percent sales tax on all tickets sold for sports events—basketball, football, baseball, golf, hockey, Jai Alai, etc., and also on tickets for all other events—movies, operas, drive-ins, plays, anywhere where we have to pay to see the show. A one percent old-age tax on everything we buy—cars, radios, TVs, appliances, you name it. Just imagine the money from cars alone. When a car costs \$4,000, the \$40 won't make much difference, but take this \$40 over all the cars we sell including trucks, tractors and other vehicles, the amount is staggering, in the billions. On football alone, we could collect close to a billion dollars plus all the other sports events.

The Social Security promised to increase its benefits, not for the aged, but for the people that are working. They are going to pay at least a dollar a week more. That is ridiculous, there is no need for this with the one percent tax, the most they would pay is about 35 cents a week so they would gain 65 cents. Not only this, take an older person living in a government apartment, right now they are paying approximately \$45 to \$50 a month. The government would be collecting \$125 a month, with this money they could build better apartments and have a policeman or guard at the apartment so the people wouldn't get robbed or raped, this is really important!!!

Now the reason I say \$250 a month approximately, there's a minimum of course, is that we have 22 million people right now on Social Security or old-age pension and of that, 10 million are still working for four hours a day. They are older people who have to drag themselves to their jobs, have to pay social security, buy clothes to wear on their jobs, buy lunches, etc. After the \$2400 a year that they make, they are lucky to take home \$1,000. Those people go to work for \$1,000, they are spending \$1,400. Now with my plan, 10 million people would get an income of \$250 a month and they would stay home, which would make five million jobs at eight hours a day for others and jobs are what we need today. Not only that, the old people wouldn't have to go on welfare or get food stamps. They could buy things with the money, not be second-hand citizens standing in line

taking all kind of "guff" from government employees who don't know the first thing about what it's like to be an old person. A lot of old people think they get it for nothing, they never got it for nothing, they have worked for this all their life. They brought up children, paid school taxes, paid for the police department, water department, gas, fire department, street repair, etc., etc. everything they have in the United States. Those people have paid for this with the money they were making at the time.

We shouldn't have discrimination against how much money we have, we are all supposed to be equal—are we all equal??? A person who has money is looked up to, an older person is looked down upon. I wouldn't call this equality. I never looked down on anybody in my whole life, I hope I never will. The point is, if we are equal then we should have an equal amount of money when we become 65 years of age. I don't care if a person is a millionaire, a street cleaner, or whatever, when he reaches 65 he would get \$250 a month. What he does with it is his business, if he wants to squander it, that's his business and if he wants to do good with it, all the better. The point is that if he has a steady income he can pay his bills, fix his house, get his lawn mowed, paint up his house, take a bus to the doctor or shopping, or pay a neighbor to take him shopping.

Not only that, 10 million people would be free to do what they want, not to have to work anymore. We would have quite a few volunteers, elderly people don't like to be left out, after all they are the builders of this country, that's a fact. No matter where they came from—Poland, Turkey, Russia, Holland, Belgium, Germany, France, England, it doesn't matter as far as I'm concerned they are all American citizens first and second is the country where they came from. However, as soon as you become a citizen of the United States, you should have equal rights and be judged as an equal person and should be able to go to any kind of church that you want. We seem to forget all these things once in awhile. We seem to think that if a person has money we can get something from him because he is better educated, not true. People that went through the lines and worked themselves up are better educated in my opinion than people that went to college and have money. Maybe this sounds funny but it's a fact. If I was in business and had to hire someone to work for me and I had the choice of someone that had worked themselves up in a building factory, for example, and had helped make cement, or carry the bricks or lumber, etc., or hire a fellow from college, I would take the fellow who worked himself up for one simple reason, he has practice, he went through it, he didn't get his knowledge out of a book. You don't get knowledge out of a book unless you have knowledge to start with.

If we can put those building people to work it would give us approximately 2 billion dollars more in taxes. We could take a tax cut without any trouble. It wouldn't hurt the government and everything I've mentioned so far wouldn't cost the government one red cent, matter of fact, it will help the government because the money that states, counties, towns, and cities give out for food stamps and welfare to the old people, could stay in the towns, cities, etc., for the younger folks when they are in need of it—when they loose their jobs, or have a disaster like a factory burning down, whatever it may be, that money would be there for them. The young folks will benefit from this too and everyone in the country should sacrifice something. The old people will pay the one percent tax too, everybody pays the tax, so the more you spend the more tax you will pay.

Right today most old people have only income of \$125 and the way everything is going up, they don't have enough money so they have to go to welfare or get food stamps. The funniest part is that people who are making \$15,000 to \$16,000 a year get the food stamps and the old people don't get them because they probably have \$3,000 in the bank which they are saving for a decent burial. They don't spend that money because they don't want to lose their respect even after death and have people saying that they were poor. Old people have respect for themselves too.

I've traveled all over the world and have seen a lot of places. The funniest part of it was that I could never tell that a person was poor in Europe. They were treated with respect, always dressed neatly and everyone else had respect for them too, children stood up for them on the buses, taxis opened the door for them—why, because they had the same amount of money to pay for these services as anybody else. They didn't pay any more, but they didn't pay any less either and they got treated like everybody else. Here, you have to have a big name like the movie stars to really get respect. Movie stars are just people like we are, why should old people get kicked out of the way for a young person with a big

name. This country was built in pioneers with the whole idea that everybody was going to be equal, but we are far from it. In Europe, they don't get 12 months old-age pension, they get 13 months. The extra month is vacation pay so they can visit their children or do whatever they want. This way the children don't have to send them money to come visit, especially when their children are struggling themselves to raise their families. The old people can visit their children, buy presents for them and do whatever they want, because they have their own money.

We have all kinds of drives here, where they say give \$5 for this and \$5 for that, old people don't have \$5 to give, so they are left out. Why leave them out, they like to give to funds too such as multiple sclerosis or blood cures or send a kid to camp. They like to give a dollar or two once in awhile but they don't have it to give so they are left out. They have the same feelings as everybody else. Talking about feelings, you know what old people die from in this country? From loneliness, most of them don't die from sickness, they die of loneliness because they can't go any place. They sit in the house all day long, have no money to go out, no clothes or shoes to go out. They don't dare ask their neighbors over for a cup of coffee because coffee is way too expensive. We give billions of dollars to the coffee plantations, look what they did, they raised coffee from 39 cents a pound to \$2.29 a pound and now it is going to go up again, the same thing with sugar. Now they can't get rid of the sugar so they give it to you with a \$5 purchase for 59 cents. The laws we have here, you have to pay \$7.50 to get coffee at a cheaper price. People don't have the \$7.50 to spend first in order to get the coffee cheaper.

We don't want something for nothing, we want to pay too but in order to do this you have to give us a decent living first. Give us a decent living and we will help. Like I said, there's five million people going to work now that wouldn't need to if they had a decent living. If they didn't have to work there would be a lot of work open now. If the people have the money, they will buy things, fix their yards, fix their houses, build new buildings, which would put carpenters, masons, electricians, window makers, etc. to work. You name it, everybody is going to get work, we'll have so much work that the old people will have to go back to work—but we don't want that. When a person is not able to work or they have to drag themselves to the job after 65 years of age because they need to make a little bit of money to keep going, I think it is terrible. I think 65 is a very nice age. I happen to be almost 72 but that doesn't make any difference. We want to do something, we want to help but always the money is holding us back, money, money, money, it seems that that is the most important thing. We can't go any place unless we have money to spend. If we want to go to a movie or any place we need money and if we don't have it then we have to sit home. The point is, old folks—our senior citizens—need a certain income so they don't have to worry about it.

Another thing is medicare cost the average person about \$200 a year before they get a penny back. They pay about \$100 a year on medicare, then they have to pay the first \$100 before you get 80 percent back. Now that's \$200 the way I see it. For me and my wife it would be \$400, so we have to spend \$400 first before we would get a cent back and that's not mentioning doctors or medicine.

It seems to me that everybody wants more money or they go on strike. But they never think of the person who has to come up with the money—where are they going to get the money. It seems that any bill that passes in the House, it's always the bill that will benefit the people who already have the money. They never say how about the old people, what are we going to do for them? They figure they're going to die next year anyway. I've seen young people die too, and the day they are born, after 21, all ages for all kinds of reasons, death is just not for old people, death is for everybody. The point is that we are supposed to see to it that everybody gets a break. If the one percent tax were in effect, everybody would benefit by it, the young and the old. It's very simple.

Today when a husband dies the woman gets a little bit more from social security but on the other hand if the woman dies the man doesn't get anything extra, he gets his own pension. In other words, we have discrimination again, we shouldn't have this. We have a lot of old folks living together now and not married so they can each get their money. Their children don't like that because they figure they are living in sin. There is no shame actually, but it isn't right. Why can't they keep their own money and get married just the same. This way if the check was \$250 for each, it wouldn't make any difference if they were married or not. They would have to work it out for themselves.

We keep talking about Women's Lib. Why shouldn't a woman have the same amount of money as a man, what makes the difference? Why shouldn't the people over 65 have the same amount of money? They all have to go to the same store and buy the same loaf of bread, eggs, cheese, meat, they have to pay the same prices. So why should there be a distinction because you make more money.

It's a ridiculous thing that street cleaners in San Francisco are making \$27,000 a year. I know elderly people that will never make \$27,000 in their lifetime. In my days you made \$1 a day and that was good money. You were lucky if you worked seven days a week and got \$7. That was a big pay. In 1937 when they started Social Security you paid the amount from what you were making at the time. Now you mean to tell me that the prices of 1937 are the same as 1975 and 1976? Boys now are making more in one week than we made in a year and yet we get paid according to what we made, not according to what the prices are today. That's what we have to look out for. If I saved \$100 I can't spend \$200. If the prices were right, \$100 in 1937 could buy a lot of things but \$100 today can't buy anything. You can buy a suit maybe, but you can't even pay the rent—the rent is more than \$100 a month. So how can people live on \$125–\$135 a month? Then when they go to see for food stamps, they are asked right away how much money they have in the bank. So far as I'm concerned, it's none of their business. That's their money, they worked for it. They don't ask a millionaire or Mr. Rockefeller how much money he has in the bank. So why should they ask the old people, it's something sacred for them.

I don't belong to any organization, never did and never will, because I don't believe in any organization. There's only one organization I believe in, that's the United States and that's good enough for me and it should be good enough for everybody. But, if you belong to a big organization, you can get a raise. Electricians are getting a raise, carpenters, painters, everybody's getting a raise but the old people. They don't get anything. Even the firemen and policemen only have to pay five years Social Security, while we paid since 1937. They only have to pay five years and they get a pension from the state and they also get old-age pension for five years of what they paid in, yet we paid in from 1937, that's quite sometime, almost 40 years.

In the first place what they should do in Washington, D.C., is take all the computers and throw them away. Just put peoples names down and their date of birth. In other words, when a person becomes 65 on January 1st, with no questions asked, about how much money you made, they are entitled to that monthly old-age pension. Now, however, they have to figure out how much money you made. Take me for example, I made about \$400 one year and \$600 the next year, I will come out with very low payments, luckily I was in business and I made some money of my own. That has nothing to do with my social security so far as I'm concerned, it's none of their business. The money I get is my money. What I pay for I should get. It's like an insurance, that's what it's supposed to be. But as I said before we don't want something for nothing. We are all American citizens, we all want to help. So don't leave the old age people out.

The point is, if people have a decent income they can pay for everything themselves and they also pay the taxes because even if they only have \$250 income, they pay \$25 taxes back again. So you count up all that money you're going to get back on this alone and it runs in the billions. Maybe after 10 years we won't have to have any social security, it would be all old age tax.

If a person is out of a job he gets paid from the union, the strikers get paid by the union. They get so much a week but he also gets Social Security for being out of a job but don't forget this person goes out on strike on his own or through his Union. The union should have nothing to say about this. If I go on strike I go on strike but it should be my own will and I have to pay for it and I have to see that my family gets food to eat. Things have changed so much in all the years that I am in this country and I've been here since 1922. I don't understand, it hasn't changed for the better, it just keeps on running backwards instead of forwards. In order to get something you have to belong to something. Well, I never belonged to anything, never belonged to a union and I don't want to belong to a union. I want to belong to the United States, I am a citizen of the United States and I want to belong in this way and I want to stay this way.

Let's get this bill passed, let's get this thing settled. If you want me to come there to talk about it and explain how we are going to get the money and what we are going to do, I'll be glad to come. Give us a chance to talk about this. If you don't know what it is all about, contact me and I will be very happy to talk to people and try to explain it. I am not saying mine is the best way but I haven't

heard a better way yet and everybody I have talked to so far seems to agree with me. Everybody thinks it's a good idea so if it's a good idea, let's get it started. It won't do me much good any more, like I said I'm an old man, but this country is going to be a lot older, soon 300 years old and it will be my grandchildren that will be worried about this and I want to see they are taken care of. That's what this whole country is all about, we are supposed to take care of somebody else all the time. Right now the young people want to make more money a week, that's fine, I'm not against people making money but when they become 65 years old too one of these days, they are going to be up against it and by that time who knows, maybe a loaf of bread will be \$5 and a pound of coffee \$10. I have no idea what the prices will be but right now we have to make a start, so if you are interested in this idea, please contact me. I will talk to anyone who can get something started. Thank you.

WEST HAVEN, CONN.

Representative ULLMAN: Enclosed you find a copy of a letter I wrote Congressman Giaimo.

In the past 6 months a study was done on social security. Among one of the proposed changes was the extension of benefits to widows who no longer had children in their care and were still not of age for retirement benefits on their husbands account (namely 40-60 age gap). At a time when you have finally succeeded in raising your family as best you can, I would think that extending the widows present benefits would be of great help to her. Also it would keep her off the welfare rolls if she could get on and help her to maintain her dignity. City, State, and Federal employees enjoy lifetime pensions regardless of age. They can also retire from the city, apply to the State, retire, and receive 2 pensions, plus receive social security after a short work period.

I would kindly appreciate your acting on some resolution that would help this age group mentioned.

Thank you.

Mrs. C. J. HARRINGTON.

Subject social security.

Representative GIAIMO: What happens to the widows age 40-60?

Representatives have been conducting studies as long as I can remember about this subject and nothing has been done.

Many of us have no resources after paying heavy medical bills after husbands illness. You pay money to go to school and live at home. A social security mother is cut off after the last child reaches 18 whether the child is living at home or not. Federal and State employees buy into social security with little work credits and receive all three. In some cases some of these people have taken many jobs while some have none.

Women alone get sick and require medical attention. To think a woman alone will be able to support herself for 20 years without some help is fantasy. To allow a woman to collect on her husband's account at a earlier age I am sure would not produce a large burden on this country. And it might save her health and your welfare at a later age. You now can work for the city and retire, apply for a state job and get a second pension plus pay into social security and receive a third. Allowing widows who have no other sources to collect past the present benefits on their dead husband's account would not produce such a large burden on the system.

Your concern for keeping the elderly in their own homes and children out of institutions and foster homes is fine, but no thought is given to us and how we are to manage.

Thank you.

Mrs. C. J. HARRINGTON.

FRIENDS OF THE AGED CLUB,
St. Louis, Mo., July 8, 1977.

Mr. AL ULLMAN,
Chairman, Committee on Ways and Means,
House Office Building,
Washington, D.C.

DEAR MR. ULLMAN: There are at least 10 million, less fortunate Social Security recipients (in the 70 to 85 age bracket) currently inflicted with the "federally

imposed below-poverty level status" and are in dire need and becoming denationalized—most of them direct descendants of a long-line of the country's pioneer stock; while Congressional pensions have actually increased 1,800 percent.

How can you or any member of the Committee justify the "civil" or "human" rights of one segment of society—that of a retired doorkeeper of the House receiving a pension of \$37,000 a year; without discrimination against another segment. My wife, Loretta, like all the others, paid into the Social Security Fund for 26 years, and only receives \$2,077.00 a year?

Sincerely,

RAY S. OLIVER, *President.*

ST. LOUIS, MO.

My "Letter to President Jimmy Carter"—is part of the Second Phase of my "Crusade for Senior Citizens" announced in the Quoddy Tides on March 25th, asking All readers, and holders of Social Security Cards to become "Friends of the Aged". See the brief autobiographic sketch on the back of the "Letter". (Please send me a clipping of your issue).

RAY SANFORD OLIVER.

How Ridiculous!—My favorite "can of clams" went up 50c this week to \$1.89 a can!

[From the Quoddy Tides, Mar. 25, 1977]

SEND A LETTER TO YOUR CONGRESSMAN

Because of the recent announcement made by the Commerce Dept., that it believes the upward spiral in Food Prices will continue indefinitely, I respectfully urge ALL the Tides' readers to become a "Friend of the Aged", by writing a letter to your Congressman or Senator, asking him to support an "increase in Social Security benefits for our Senior Citizens; due in June; which President Jimmy Carter could veto—and enclose a copy of The Beatitudes ("Blessed are the poor in Spirit"—Matt. 5:3-12)"

BEATITUDES FOR FRIENDS OF THE AGED

Blessed are they who understand
My faltering step and palsied hand.
Blessed are they who know that my ears today
Must strain to catch the things they say.
Blessed are they who seem to know
That my eyes are dim and wits are slow.
Blessed are they who looked away
When coffee spilled at table today.
Blessed are they with a cheery smile
Who stop to chat for a little while.
Blessed are they who never say,
"You've told the story twice today".
Blessed are they who know the ways
To bring back memories of yesterdays
Blessed are they who make it known
That I'm loved, respected and not alone.
Blessed are they who know I'm at a loss
To find the strength to carry the Cross.
Blessed are they who ease the days
On my journey Home in loving ways.

RAY SANFORD OLIVER,
Author of Lubec "Memorabilia" series,
St. Louis, Mo.

ST. LOUIS, MO., May 10, 1977.

PRESIDENT JIMMY CARTER,
White House,
Washington, D.C.

DEAR PRESIDENT CARTER: My good wife, Loretta, is hopping mad! At 70, after paying into the Social Security fund for 26 years, her monthly check is \$173.10. I am 75, of New England stock. After three strokes, I should hunker down.

But I just can't forget the plight of our Senior Citizens in the richest country in the world.

My wife and I have kept our own inflation chart during the past year. We have found that every item on our supermarket list has increased in price from 2 cents to 15 cents every week. Yearly increase: 28 percent. Utility bills, up 31 percent, with more to come. Property taxes, up 42 percent. Prescription Drugs, up 59 percent.

Our cherished can of clams, 6½ ounces, for hot New England chowder suppers, up from 49 cents to \$1.39, with more to come. What all this has done to fixed incomes is no longer an economic secret.

You know all this, Mr. President. But the sad fact is that former President Nixon's economists knew all about it, yet little was done. Former President Ford's economists (were they the same Nixon savants?) also knew about it, but little or nothing was done. And now your economists and your advisors—?

We know there are many worse off than we. We have good reason to understand and feel for them. But the plight of the elderly remains as Senator Edmund S. Muskie described it in a letter to me on March 16, 1972, when I began my crusade. He wrote it was one of our nation's "silent tragedies," with trusting Social Security recipients "being reduced to shameful poverty."

We do not know the answers, of course, Mr. President. But perhaps you, with your Godgiven compassion, wisdom and opportunities, may find them.

As I say, we simpler folk don't know. But men like Lawrence K. Roos, president of the Federal Reserve Bank here in St. Louis, indicate they know. He recently placed much of the blame on our own U.S. Treasury. He claimed it was pressuring the Federal Reserve to finance mounting deficit spending.

He called "this financial sleight-of-hand that would have made Merlin the Magician proud." It is worse, he warned, than simply printing money with no backing whatsoever.

Mr. President, we oldsters simply don't know, and all the contradictory statements add to our confusion. What we do know is that those few remaining, hard-earned dollars we banked for a rainy day, don't do the job anymore. It has not only rained on American oldsters, it has absolutely poured, and it continues to do so.

And we cannot help but wonder, in face of Congressional salary boosts and seeming Foreign giveaways, why our looked-to Autumnal years have become fright years. This in the richest and possibly only remaining true democracy in the world.

What ever the plight of refugees and dissidents abroad, we cannot overlook the man-sized problem of elderly economic "refugees" in our own country. Mr. President, We live in constant fear!

Constant fear of crime!

Constant fear of catastrophic illness!

Constant fear that Social Security will collapse!

Constant fear of losing our sacred self-respect and dignity as Americans and being forced on welfare!

We know that the buck of decision stops at your desk and that you are beset with myriad problems, particularly now with the Soviet Union, and we pray for you. But the elderly citizens of our own country also urgently need you, Mr. President. We want you as an honorary member of our informal "Friends of the Aged Club". Can you—won't you—join?

May God be with and bless you in all your endeavors. May He show you the way to better our nation and to advance its cause and ideals among the troubled nations of the world.

Respectfully yours,

RAY S. OLIVER.

President, Friends of the Aged Club.

Be popular—"Join my "Friend of the Aged" Club with Mr. Carter.

(I started, and completely financed "My Crusade for Senior Citizens" on January 10, 1972).

RAY SANFORD OLIVER.

"I am a native-born American, a retired printer-publisher, 75 years young, and I am proud of my English-Puritan ancestry and my Christian faith. To keep active and maintain an agile mind, I write a feature "Memorabilia" series for a "down-east" newspaper, while making an amateurish study of "Criminology" and "Major Ideologies".

The business acumen gained through a 45-year business career, an active commitment to the Senior Citizens movement, should qualify me to submit worthwhile suggestions to ALL these problems. My files contain lengthy correspondence with Senators Muskie, Kennedy, Javits, Symington and Eagleton regarding "problems of Aging" and our "Social Security Fund," dating back to 1972.

TAMPA, FLA., May 9, 1977.

HON. SAM M. GIBBONS,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. GIBBONS: The announcement this weekend of President Carter's proposals for funding the Social Security Insurance Trust Fund followed by the usual Press comments, the U.S. Chamber of Commerce and similar groups with their predictions of dismay and gloom, as well as the political expediency statements from Congressional Sources prompts this letter to you.

When the Social Security Insurance (OASI), later extended to include disability insurance (OASDI), program was enacted in 1935 it was a well recognized fact that many persons then being covered would start drawing annuities which would actuarially exceed their contributions. This built-in liability would normally require the establishment of an "accrued liability reserve fund" financed from General Fund Revenues in addition to the funds accumulated from payments received from employee and employer taxes.

This was acknowledged by Congress, the Administration and everyone else involved in the program. However due to the economic climate at the time coupled with the probable deleterious effect such a reserve would have on the economic recovery of the country it was decided to delay the establishment of this "accrued liability reserve" to a later date. In fact the plan was to acknowledge this debt to the Social Security Insurance Trust Fund by making payments to it from General Fund Revenues on an as needed basis in order to maintain the integrity of the Trust Fund.

Each time the program was expanded to cover additional groups of persons the "accrued liability" of the General Fund was increased and from 1935 to 1958 the fact that this indebtedness would someday become due and payable was accepted by everyone. Then in 1958 the Advisory Review Board omitted this from their Report since then everyone has conveniently put on blinders and hidden their heads in the sand of political expediency.

In effect Congress and the various Administrations subsequent to that date have reneged on their promissory notes to the Insurance Trust Fund thereby denying the "good faith and credit" of the Federal Government to the participants in the OASDI program.

The Carter proposal to use General Fund Revenues for repayment to the Trust Fund of this "accrued liability" is a reaffirmation of the good faith and credit promises. However to put it into the context of a "giveaway" to the S.S. Insurance Fund covering up the true facts by not publicly stating that this proposal is repayment of the implied indebtedness is open to public resentment as a further attempt to label OASDI as "Welfare."

The second proposal to ask employers to pay taxes on the total income of their employees is not fair unless there is a total revision of the Social Security Insurance payment policies so that beneficiaries will be paid in accordance with accepted actuarial practices based on the entire combined contributions of their employer and themselves. This would eliminate the need for private pension plans and the principle of income sharing.

Thus the low income group under OASDI receiving higher benefits than are actuarially justified could be supplemented from General Revenue funds since the policy of income sharing is a welfare program which should be shared by everyone and not imposed only on those who are paying Social Security taxes.

I would be happy to discuss this further with you at your convenience in Tampa and would appreciate it if you would introduce this statement in evidence at subsequent hearings before your committee on this matter.

Yours truly,

EUGENE R. GREENMORE.

PRESIDENT CARTER'S SOCIAL SECURITY PROPOSALS

FRIDAY, JULY 22, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SOCIAL SECURITY,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice in room 210, Cannon House Office Building, Hon. J. J. Pickle presiding.

Mr. PICKLE. We will resume the hearings on matters pertaining to the social security program.

We have two witnesses here who are colleagues. Members of Congress, followed by at least three panels. We have a lot of statements and testimony to receive.

I am going to ask our colleague, Congressman Bernie Sisk to come forward if he is here.

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, ACCOMPANIED BY CHRISTINE CLARY AND GWENDOLYN LUTY

Mr. SISK. Good morning, sir.

Mr. PICKLE. Bernie, this room is so auspicious and so spacious, and you are so far away, I didn't recognize you right at first. We are delighted to have you here. If you will have a seat, you may proceed.

Mr. SISK. Thank you, Mr. Chairman. I have some reliable assistants with me this morning, Miss Luty and Miss Clary. There are my experts on social security and illegal aliens.

So, I brought them along just in case.

Mr. PICKLE. Both misses, we are glad to have you here.

Mr. SISK. First, Mr. Chairman, I have three bills pending that I want to comment briefly on this morning. I have a fairly extensive statement which I will ask be made a part of the record, Mr. Chairman, and then I will very briefly and very quickly outline the principal provisions of the three bills.

Mr. PICKLE. Your whole statement, Mr. Sisk, will be entered in the record. You may proceed to comment on the individual bills.

Mr. SISK. It is a privilege to appear before your committee on these three bills and I appreciate the fact that the full statement will be made a part of the record. Let me comment first very briefly, Mr. Chairman, on H.R. 5072. That bill seeks to speed up and improve the procedures for settling disabled workers' claims for social security benefits. The bill would:

(a) clearly provide for the claimant's right to reconsideration of an adverse decision on a claim—not now stated in law;

(b) provide for an informal person-to-person conference to be held between the claimant and an official participating in the decision on the claim at the reconsideration level;

(c) require the Social Security Administration to issue a reconsideration determination within 90 days of the date the claimant asks for reconsideration;

(d) require that in the event of an adverse reconsideration determination, the claimant must be provided a written detailed statement of the case summarizing the evidence considered, the law, and explaining the reason for the denial;

(e) give administrative law judges the authority to remand claims for appropriate action by another component of the Social Security Administration in cases where the claim is not properly prepared for a hearing or there has been an error or omission in previous action on the claim.

The General Accounting Office has endorsed my proposal with regard to the person-to-person interviews, reporting on October 1, 1976, that these interviews help claimants to better understand why their claims must be denied and they reduce the number of claims appealed to the hearing level. GAO also endorsed my proposal that claimants be fully informed as to the specific reasons for claims denials. The improvements I propose have been tested on a pilot basis by the Social Security Administration, and it is my position that they should be written into the law as formal procedures.

H.R. 5656 provides that the administrative law judges serving the Social Security Administration shall be classified at the grade GS-16. The bill is aimed at placing social security judges on a par with the majority of judges in the other Federal agencies and at curbing the problem the Social Security Administration has in recruiting and retaining its judges, many of whom leave for other agencies as soon as a position at the GS-16 level becomes available to them.

Social Security judges must hear a variety of cases under several laws, including titles II, XVI, and XVIII of the Social Security Act, title IV of the Federal Coal Mine Health and Safety Act, discrimination cases under the Civil Rights Act, and cases under the Food and Drug Act. Their caseload is heavier than that of judges of other agencies, and their range of discretion is often broader than that of judges presiding over other types of cases.

Your subcommittee has recognized the need to end the drain of talent away from the Social Security Administration, and it is also aware of the attitude on the part of at least one member of the Civil Service Advisory Committee that the GS-15 social security judges serve as a "good farm system" from which the regulatory agencies can recruit their talent, an attitude which creates morale problems for the social security judges.

Chairman Burke has introduced his bill, H.R. 5723, which calls for the upgrading of the temporary judges from GS-14 to the regular grade of GS-15, and I ask that your subcommittee take this additional action of placing social security judges on a par with other Federal judges at the GS-16 rating.

Mr. Chairman, I am rushing along. I assume we have a vote of some kind according to the bells.

Mr. PICKLE. There is a vote. Would you like to finish?

Mr. SISK. I will try to finish, because I only have one bill left to comment on and I will be just as brief as possible.

H.R. 4646 calls for the Social Security Administration to issue social security cards of a type which cannot be duplicated or forged. It is not necessary that everyone with a social security account number at the present time obtain the new card, only those who will seek employment. The card would then become the sole identifier of eligibility to work.

Since 1973, when Public Law 92-603 was enacted, applicants for new social security cards have had to present evidence of age, identity and citizenship or alienage to obtain one. In addition, new applicants are electronically screened against account numbers issued since 1950 to insure that they do not have another number. H.R. 4646, therefore, would expand upon existing law. Those who were issued cards prior to 1973 would have to present such evidence to obtain the new tamper-proof card, but they would retain their old number.

The tamper-proof card is the only fair method of dealing with the illegal alien problem. It would have to be presented to employers by everyone, citizens and aliens alike. The potential for discrimination against minorities because of fear of prosecution for hiring illegal aliens would be eliminated, and employers would not have to be law enforcement officers as they would be under Rodino-type approaches.

Nearly everyone who applies for a job now must present his social security card or number. Even those not covered by social security still must do so for income tax purposes.

To counteract charges that the card would become a national ID card or internal passport, may I point out that the social security card or number is already a prerequisite for employment in most cases. The new card would not have to be carried, would not be required for identification, and would not be available for inspection. Its sole use, the only occasion when it would be shown to anyone, would be at the time of employment.

I cite that specifically, Mr. Chairman, because of some charges that we are asking for a national ID system in which we would have to carry an ID card at all times. That is simply not true of our proposal.

The Privacy Protection Study Commission which issued its report this month said that the social security number in and of itself was not bad. Such "identification" numbers are needed in today's society. It concluded that the social security number was a "surrogate for the problem of record linkage, exchange, and consolidation." That is the real fear, that through such a number, records of all types could be consolidated. H.R. 4646 does not propose that. As a matter of fact, it might eliminate record exchange between the Social Security Administration and the Immigration and Naturalization Service. Under current law, when a person is issued a social security card for nonwork purposes, such as for bank accounts and the like, the account is marked by social security, and if work earnings show up on the account, INS is notified. Such an exchange would not be necessary under H.R. 4646, because either the new type of card would not be issued to those who

do not need it for work purposes, or, if they are issued a card, it would have distinctive markings to show they cannot work.

Mr. Chairman, we have been working on that particular bill for a long, long time. We feel very strongly that something has to be done in connection with the handling of illegal alien workers and this is one of the ways in which we feel there should be serious consideration given.

Mr. Chairman, I appreciate very much the time I have taken here this morning.

Mr. PICKLE. You have given us a lot of information in rapid fire order. You remind me of one of my weather bureau friends that said he spoke at the rate of 150 words a minute with gusts up to 450 words a minute.

All three of these measures we have mentioned are items which are demanding a lot of talk and discussion by your subcommittee, by Members of Congress. The first one about improving the procedures in the disability area certainly must be given serious consideration. That is a rather broad field, but I think we can save money in this category. We certainly may do the upgrading as you suggested for level 16. The last item with respect to issuance of a card is something that will certainly come to pass. We should not fear this concept because we are now using it in many respects. I think it may be tied well to the illegal alien question that you suggested. I know that there have been several drafts of those kinds of cards. I am glad to see you speaking out on it and giving us information because you are a respected Member of this House and what you say and the leadership you give will have considerable bearing as to the debate in the proceedings.

I thank you for your testimony.

[The prepared statement follows:]

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, Members of the Subcommittee, it is a privilege to appear before you today to present my statement in explanation and support of three bills which I have introduced and which are under your consideration. These bills are H.R. 5072, H.R. 5656, and H.R. 4646.

H.R. 5072 is a modified version of H.R. 8018, a measure I introduced with wide support in the last Congress. 62 members have cosponsored the bill, which is aimed at speeding up and improving the procedures for settling disabled workers' claims for social security benefits. In spite of the fact that during the 94th Congress we approved emergency legislation expanding the corps of administrative law judges presiding over hearings on social security and SSI disability claims, we have not yet been able to reach a point where claims are settled in as timely a manner as they should be. In the region which includes my State, California, there is still a tremendous caseload, and claimants are having their files sent out of the State and even out of the region to hearing offices where judges with lesser workloads are assigned to schedule the hearing and travel to California to preside over it.

H.R. 5072 provides that informal person-to-person conferences shall be held between the claimant and social security officials participating in the claims decision-making process at the reconsideration level of review; it requires the Social Security Administration to issue a reconsideration determination within 90 days from the date the claimant requests reconsideration; it requires that in cases of adverse reconsideration determinations, the claimant shall be provided a detailed written statement of the case, discussing the evidence reviewed and the reasons for the denial; and it would formally write into the law the au-

thority of hearing examiners to remand claims for appropriate action in cases where claims are not properly developed for hearings or where there has been an error in previous review of the claim.

The person-to-person interviews at the reconsideration level have been endorsed by the General Accounting Office which reported on October 1, 1976 that these interviews help many claimants to better understand why their claims must be denied. The conferences result in fewer claims being appealed to the hearing level, however, those claims which are pursued through the hearing procedure are better prepared and presented. The Social Security Administration has plans to implement this interview procedure nationally over a three-year period beginning in January of 1978, however, it is my feeling that this procedure should be written into the law as a formal step in claims review. GAO also endorsed my proposal that claimants be fully informed as to the specific reasons for denials of their claims. The 90-day time limitation for the reconsideration of claims is a goal which the Social Security Administration has indicated it hopes to achieve, but without a requirement of the law. It is my contention that if by statute we impose time limits on claimants with regard to their filing of reconsideration, hearing and appeals council review requests, then we can impose reasonable time limits on the agency. Hearing examiners are currently exercising informal remand authority, to reduce the number of claims awaiting hearings where possible. Again, I feel that this authority should be formally established.

H.R. 5656 provides that the administrative law judges serving the Social Security Administration shall be classified at the grade GS-16. The bill is aimed at curbing the problem the Social Security Administration has in recruiting and retaining its administrative law judges, many of whom leave for other agencies as soon as a position at the GS-16 level becomes available to them. It is my opinion that with the increasing responsibilities which the Social Security judges are being asked to shoulder, they deserve the same classification and pay which the majority of judges in the regulatory agencies receive.

Social Security judges must hear a variety of cases under several federal laws, including titles II, XVI, and XVIII of the Social Security Act, title IV of the Federal Coal Mine Health and Safety Act, discrimination cases under the Civil Rights Act, and cases under the Food and Drug Act. They are frequently detailed to other federal agencies to assist as needed on pending cases. In spite of the fact that there appears to be a general attitude that the issues with which the SSA judge must deal are less complex than are the issues which come before the judges of the economic regulatory agencies, in fact, evidence indicates that we expect far more from SSA judges than from others. The average current caseload of an SSI judge is 25 cases per month, I understand, while judges of other agencies may hear as few as 20 cases per year. Social Security judges are required to dispose of large and growing numbers of cases and in the process to build complete case records and issue carefully documented decisions. In making determinations of medical and vocational disability, SSA judges actually have a range of discretion that is broader than that of judges presiding over other types of cases.

Mr. Chairman, I believe your subcommittee has recognized the need to end the drain of talent away from the Social Security Administration which so badly needs its judges, and your subcommittee is aware that the Civil Service Commission Advisory Committee has at least one member who voiced the opinion during a meeting held in February of this year that the GS-15 social security judges serve as a "good farm system" from which the regulatory agencies can recruit their talent. Social Security judges are aware of this attitude and they have pointed out to me that the discrepancy in grade and pay creates a serious morale problem which compounds the pressure they are under due to their heavy workload.

Chairman Burke has introduced his bill, H.R. 5723, which calls for the up-grading of the temporary judges from the grade of GS-14 to the regular grade of GS-15, and I would ask that your subcommittee take this additional action of placing Social Security judges on a par with other federal judges at the GS-16 rating.

H.R. 4646, which I introduced on March 8th with several other members, would require the Social Security Administration to issue social security cards of a type which cannot be duplicated or forged. For the most part, the card would be issued to those persons who are U.S. citizens, or aliens who have been lawfully

admitted to the United States under conditions which permit them to work while here. The new card would then become the sole identifier of eligibility to work in this country. Employers who hired anyone who did not possess such a card would be fined, imprisoned, or both.

I initially introduced this proposal back in February 1975 because I was convinced that it would provide the only fair means of coping with the illegal alien jeopardy. I have not changed that view, and it is my sincere hope that this Subcommittee will look at the proposal objectively and if necessary, conduct a thorough study of the implications of making the social security card a prerequisite for employment, as the social security number already is in most cases.

I am fully aware that the Social Security Administration has historically resisted becoming a part of a control system over aliens, and up until 1972 that resistance was perhaps justified because an applicant for a social security number was asked neither for proof of identity nor if he had already been issued a number. But on October 30, 1972, Public Law 92-603 was enacted, requiring all applicants to submit evidence to establish age, identity, and citizenship or alien status. Formal procedures were implemented on July 1, 1973. Now, when a person applies for a social security card, he is required to present evidence of age, identity, and citizenship or alien status, and the application is electronically screened against prior applications from 1950 to insure that he does not have another account number.

I do not plan to go into the illegal alien problem at length here. I am sure the members of this Subcommittee are aware that it is a serious problem which demands immediate attention. It has only gradually been realized, however, that immigration—legal and illegal—is not just another small, possibly invigorating stream in the population growth of America. It is becoming the major source of that growth with the prospect not far ahead of becoming its only source. About 30 to 50 percent of our current population growth derives from illegal immigration alone at the present time, and the figure will increase. Taking into account illegal immigration, if the present rate of growth continues, we will double our 220 million population in about 40 years. At that rate of growth, all of our projections for energy, housing, education, social services, hospital beds, and the like will go down the drain. We are dealing with a shadow population, and people who are underground cannot be counted for planning or fiscal allocation purposes.

Leaving the medium to long-range environmental and population considerations aside, illegal aliens are now displacing the resident population from jobs to unemployment rolls. Public officials in New York, California, Illinois, Massachusetts and elsewhere insist that the social welfare costs of large illegal alien populations are considerable. Local governments especially feel the pain, as their budgets are far more sensitive than that of the federal government to increases in welfare, health, education and police expenses.

Most observers agree that the only way in which we are going to reduce the flow of illegal immigrants into the United States is to remove the economic incentive which draws them here in the first place—jobs. Central to most proposals to deal with the illegal alien problem is the idea of employment sanctions. Such sanctions have been a principal element in past legislative attempts to deal with the problem, notably the so-called Rodino Bill, which has been passed by the House twice. But a basic problem which pervades nearly all aspects of the illegal alien issue is how to distinguish a U.S. citizen from the alien who claims to be one. How does the employer determine whether or not he can hire a person seeking work? Does he ask every prospective employee for proof of citizenship or alien status? If he does, how will you or I prove our citizenship? Do we carry our birth certificate, passport, or naturalization certificate when seeking a job? Or, does the employer ask only aliens for proof of their status? If so, how does he determine who is an alien and who is not? Does he simply question those who "appear to be noncitizens"? Consider the threat such a system would pose to the civil liberties of minority groups, especially to foreign looking or sounding Americans.

Since the overriding incentive for aliens to enter and remain in the U.S. illegally is their desire to work, social security has been an important element in the problem, and I believe it can also be an important element in the solution. Whether we wish to admit it or not, the social security number has become a prerequisite for employment. While the social security number originally was designed to provide a reference to which wages could be reported in order to establish and record eligibility for benefits, over the years its use has expanded well beyond its original intent, principally as the basis for Internal Revenue Service

controls for the income tax liability of wage earners. So now even workers who are not covered by social security must present their social security numbers to employers for income tax purposes. Illegal aliens, well aware of this fact, easily obtained social security cards prior to 1974. Unfortunately, lack of a valid card is still not a serious obstacle to employment. Counterfeit cards are readily available for a price, or the illegal alien can simply borrow a valid card from a friend.

The social security system is the one jurisdiction which applies to every potential worker in the United States and, therefore, it seems to me it can effectively help in the control of illegal alien employment. The social security card can, if we wish, provide a more reliable means of identifying those who are legally eligible to work and substantially eliminate, or at least reduce considerably, what social security officials admit is the fairly widespread abuse of the system by such aliens.

If we are going to penalize the employer for hiring illegal aliens, we must provide him with a document in which he can knowingly rely. H.R. 4646 does just that. It would place enforcement responsibility where it belongs—with an agency of the Federal Government. The employer would be spared the role of policeman or enforcement officer and employer discrimination against minorities because of fear of prosecution for hiring illegal aliens would be eliminated. All workers, citizens and aliens alike, would present the new card when seeking a job.

I am fully aware that there are those who see such a card as a sort of national identity card or internal passport that could inhibit everyone's civil liberties. They ignore certain important elements. First of all, as I noted earlier, the social security card or number is already a prerequisite for employment, except under rare circumstances. The new card as envisioned in H.R. 4646 would not be carried, would not be required for identification, and would not have to be available for inspection. Its sole use, the only occasion when it would be shown to anyone, would be at the time of employment. It would be presented to the prospective employer in much the same way as the social security card or number is now presented. The only person placed at a disadvantage would be the illegal alien, who is already in violation of the law by being in this country in the first place.

Even the Privacy Protection Study Commission which issued its report this month found no evidence to suggest that any unique aspect of the social security number was particularly objectionable. It concluded that the social security number was a "surrogate for the problem of record linkage, exchange, and consolidation." It noted further that: "Although SSN is often used to facilitate record exchanges, it is only one of the many possible ways that records and information can be, and currently are being, linked, exchanged, and consolidated." Concern or can be, and currently are being, linked, exchanged and consolidated." Concern for privacy, therefore, should be directed at record exchange, not at the social security card or number.

H.R. 4646 does not call for record linkage, consolidation or exchange. It would only require that the new card contain the minimum amount of information necessary to insure that the bearer is who he says he is.

In this connection, I might point out that current law provides for the issuance of social security numbers for non-work purposes. Alien students may need a number for registering in schools and aliens earning interest from bank accounts may require one. The accounts of those issued cards for non-work purposes are annotated to detect non-interest earnings, and the Social Security Administration must notify the Immigration and Naturalization Service when this occurs. Although this notification procedure has been temporarily suspended to give the Social Security Administration time to formulate new regulations to comply with the Privacy Act, it should be clear that the current procedures for safeguarding the social security number facilitate record exchanges rather than inhibit them. If H.R. 4646 were enacted into law, the need for the Social Security Administration to notify the INS of earnings recorded on a non-work account would be eliminated. The new card would either not be issued to those with non-work accounts, or would be issued with special markings to indicate that the bearer is not eligible to work.

President Carter appointed a Cabinet-level task force to review the complex illegal immigration issue. One of the features discussed by the task force was the requirement that all Americans present, and employers examine, a certification of the right to work. While it is acknowledged that such a card would be the simplest mechanism for certifying employees, I now understand that the economy-minded Administration, concerned by some estimates of the cost of

such a system, will recommend employer sanction legislation, such as that passed by the House in the past, placing the full burden upon the employer to determine who he can and who he cannot hire.

Cost is a legitimate concern, of course. But given the monumental costs of the illegal alien problem to our society, it seems to me that this is an issue which deserves careful scrutiny. Therefore, I urge this Subcommittee to undertake a thorough study to determine if a tamper-proof card of the type proposed in H.R. 4646 can be produced without the need for computer hook-up, and to determine how much it would cost to put the system into operation, and finally to weigh those costs against the ever increasing costs of illegal immigration, not only in terms of lost wages, unemployment benefits, welfare, social services and the like, but to the environment as well.

A national work card, such as the new card envisioned by H.R. 4646, also engenders vivid fears of George Orwell's 1984. These fears do not seem to respond to rational discussion even though no one has been able to demonstrate how such a card, carrying the same information as one's driver's license, constitutes a step toward tyranny. Therefore, I would hope that the Subcommittee would give serious attention to this aspect of the problem as well, in the hope that such fears can be put to rest.

Mr. SISK. Thank you very much, Mr. Chairman.

Mr. PICKLE. The subcommittee stands adjourned for about 10 minutes.

[Short recess.]

Mr. PICKLE. We will ask the subcommittee to come to order.

We will proceed with the statement of another colleague, the Honorable Elliott Levitas from Georgia.

I am pleased to recognize him at this time.

You may proceed, Mr. Levitas. Do you have a prepared testimony?

STATEMENT OF HON. ELLIOTT H. LEVITAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. LEVITAS. I have a prepared statement, Mr. Chairman, which has been furnished to the subcommittee.

Let me thank you, Mr. Chairman, for affording me this opportunity. As always, it is a privilege to testify before this extremely important subcommittee and on an issue that touches every American, that is except Members of Congress and certain Government employees who are exempt from the system, and I am referring to the social security system.

Mr. Chairman, I would like to extend through you to Mr. Burke our colleague, my wishes for his speedy recovery from his recent medical problems.

Mr. PICKLE. Your thoughtfulness will be relayed to the chairman. He is doing fine. He is just as crusty and as testy as always. Your remarks will be appreciated.

Mr. LEVITAS. I thank you very much.

I would like to ask permission to revise and extend my remarks and make my entire statement a part of the record if I may.

Mr. PICKLE. It will be entered.

Mr. LEVITAS. Rather than read this statement word for word, which you have before you, I would like to make a few comments and touch on some of the highlights that I would like to call to the subcommittee's attention.

Mr. Chairman, I have come to the conclusion somewhat reluctantly and unhappily that the degree of concern and dissatisfaction and worry

about the social security system in the United States as it is perceived by the American public is far greater than that feeling on the part of members of the executive branch of government and indeed Members of Congress.

It has been my experience that other than the topic of the day, the question that I receive the most, whether it is at civic club meetings, townhalls, or radio talk shows, relates to the social security system, its financial viability, its equity or lack thereof, and its future. I think that this concern has reached a point in the public's mind where it is time for Congress to do something about it. What I am saying is I think the public is very much concerned about the social security system.

They expect the executive branch and the Congress to do something more than simply talk about it here.

Mr. PICKLE. I will interrupt you simply to say I concur with that feeling. Also, in my district, social security is brought out as a topic of concern and discussion more than any other one issue. Over a period of week after week after week, social security is the concern of the people and we must do something about it. That is why we are holding these hearings because we are determined that we present a positive program to the Congress.

Mr. LEVITAS. I am very pleased to hear that, Mr. Chairman. You and I have talked about this before and I know of your great concern and interest. I somehow get the feeling, however, that many of our colleagues in the Congress and many of the people in the administration and in former administrations have not felt this same sense of urgency. What you are doing in this subcommittee today, I think, will not only result in specific legislative proposals but will do a great deal to assure the public that there is a concern which they have now been able to communicate.

I have introduced four bills in the Congress relating to the social security system. Two of those bills deal with rather specific subject matters and two deal with broader subject matters.

The first of the bills relates to an existing inequity. It would bring everybody under the social security system including Members of Congress and employees of the executive and legislative branches of Government. I am not very sanguine about the success of that proposal but I think it makes a point because if the social security system as it presently exists is such a wonderful program, then why don't the Members of Congress participate in it? Indeed, there must be something that is not right when the Administrator of Social Security himself is not covered by the system.

The second proposal is one I know which you have received a great deal of testimony on before and there have been a number of bills dealing with it, and that would increase the earnings limitation under the existing law to 150 percent of the poverty level. I think it is obvious that persons who are retired and want to work to supplement their income should be able to make half again as much as the poverty level income before they receive the social security penalty. After all, persons who receive millions of dollars of unearned income can continue to receive full social security benefits, and it is only the retired person who has to work to supplement his income who is penalized.

However, the two bills which I am primarily interested in directing your attention to today, Mr. Chairman, are House Joint Resolution 166 which would create a National Commission on Social Security and H.R. 5064, which is the Disability Insurance Act Amendments of 1977.

The first proposal deals with a long-term overhaul of the entire system.

While it is true that up to this point, the social security system has never missed a payday, and I think it never will, that system, in order to continue to maintain public support and provide adequate levels of benefits may have to be entirely different as we move into the last part of this century and into the next. The type of system which we structured in the 1930's may not meet the needs and problems of the latter part of this century and the 21st century.

We must, without question, assure to every person who is present within the system and is looking to it for the benefits it provides that they will not be lost. I think that is clearly an ironclad commitment. By the same token, I think those people who are now entering this system are looking for something different and better. I think that can be had.

I don't think they want any more bandaids and mercurochrome approaches for problems which are more serious, and I think that the President's proposal which is one of simply more tax—and a most regressive tax at that—which parallels a proposal made by the former administration, at most is a short-term solution, and cannot continue the viability and confidence of the system if our only solutions are to tax, tax, tax—the most regressive type of tax we have—pouring it into the same system with all of its problems.

Now, what do I call for? I call for a national commission to be appointed jointly by the President and the Congress that would take a long-range view of the social security program. It is true we have the bureaucratic advisory councils now which meet every 4 years, but these are councils appointed by the Secretary of HEW. They operate basically out of the Social Security headquarters. They don't deal with the general public as such, and even more importantly, they don't take the objective, long-range look that asks the question, "Do we need a different type of system for disability retirement and survivorship?"

A national commission, which would be able to focus objectively on difficult questions that must be asked now in 1977, would be in a position to give that type of study which the Social Security Administration Advisory Councils, in my opinion, have not and cannot provide.

The bill I introduced calls for the abolition of the advisory councils. That may not be necessary. It may be necessary to continue the advisory councils for the specific purpose of keeping the roof from leaking and the plumbing in order. That is only interim. We have got to create a national commission consisting of members from the insurance industry, actuaries, businessmen, retired people, homemakers, everybody who is touched by the system, and let them travel around America and talk to people in all parts of this Nation and all walks of life and see if we can identify the problems and come up with a better system.

In my prepared testimony, Mr. Chairman, I refer to an example of how a grassroots input can make a difference in connection with a social security committee.

A Citizens' Social Security Committee was created in my congressional district and worked closely with the regional officials of social security. As a result, the committee made a distinct contribution both to the public's understanding of the system and to the Social Security Administration, who, while not agreeing with everything that was commented on by this private citizens' committee, nevertheless got a great deal of input and suggestions which have been implemented.

So much for the national commission.

The other piece of legislation that I have referred to relates to the disability insurance program which is perhaps the most difficult of them all. The legislation which I have introduced is one which you and I have discussed personally on several occasions. It has, I think, two major functions. One, it would create a more humane system for the disabled; and two, it would save the taxpayers money. Without going into all of the details of this particular piece of legislation, which is extremely complex, and I do have a section-by-section analysis which I can furnish your committee staff, and I think they have already discussed this in great detail and are very knowledgeable about it, it simply says from the humane point of view that we don't write off and consign to our out-of-sight portion of life, those people who enter the disability system. It says that rehabilitation is possible and that if people know that they have the opportunity and the responsibility of seeking rehabilitative services, they then have the psychological motivation and the real opportunity to become rehabilitated, contributing citizens with all that entails in terms of personal dignity and in terms of a more full and rich life.

It is my impression that the existing system does not provide that, that it is easier to stay on disability payments permanently once you get on than to have the motivation and the opportunity, realistically, to become rehabilitated and be withdrawn from the system.

By the same token, the failure to make periodic redeterminations and to emphasize rehabilitation occurs at a great cost to the trust fund and to the taxpayer, and this legislation that I propose would provide that both applicants and the trust fund would be represented by attorneys so that the applicant can be assured of legal counsel to present his case to the administrative law judge, and by the same token, the trust fund itself will have an independent advocate to defend it. In my opinion, based upon the experiences that existed in the past, literally billions of dollars could be saved by defending the trust fund in this manner rather than making the administrative law judge the defender of the trust fund in some instances, and the adjudicating official in all instances.

So, this legislation brings together two major thrusts. No. 1, it provides for rehabilitation services, in order to periodically reexamine the condition of the recipient to ascertain whether or not he has had his disability improved or removed, and at the same time, to provide the recipient, or the applicant, and the trust fund with legal representation.

I am told, having spoken to a number of people who are administrative law judges are social workers, who are psychologists, who are involved in rehabilitation and physical therapy, that one of the great deterrents for rehabilitation success is lack of motivation. This legislation would provide that motivation. This legislation would

enable people who would otherwise be consigned to a life of nothing but disability payments from the social security system to have a new lease on life and an opportunity. I think this is legislation which has not been unnoticed in the past. I believe Mr. Sisk and Mr. Burke have introduced similar bills. I think the time has come where we really have the opportunity to do something along these lines. I urge the subcommittee's serious consideration of both of these proposals as you develop your legislation. When you make whatever recommendations you make to the Congress, if you have to put out the bandaids and mercurochromes and the aspirin again for a short time so be it, but don't let that legislation pass without laying the foundations and blueprints and the plans for a long-term overview and overhaul that the national commission would provide.

Also, I commend your attention to the necessity for salvation and improvement of the disability insurance program somewhat along the lines of the legislation that I have introduced H.R. 5064.

Thank you, Mr. Chairman, I appreciate very much your attention and your courtesy and this opportunity.

[The prepared statement follows:]

STATEMENT OF HON. ELLIOTT H. LEVITAS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF GEORGIA

Mr. Chairman, it is a privilege for me to testify before your subcommittee today on an issue that touches every American citizen—except Members of Congress, and certain government employees who are exempt from its coverage—the social security program.

I would also like to extend to the distinguished chairman of this subcommittee, Mr. Burke, my wishes for a speedy recovery from his medical problems. His absence makes the work of all of us in reforming this program that much harder.

One of the major concerns of this committee, and indeed of all of us in Congress, will be to insure the future stability of the social security program. It hasn't missed a payday yet, and it will be our task to insure that it doesn't in the future. The "it" that has not missed a payment so far, may have to be a different "it" if the program is to continue successfully and with public support. There is no doubt that major changes must be made in the current program.

As Thomas Jefferson said, "I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind . . . with the change of circumstances, institutions must advance also to keep pace with the times."

The social security system is an institution which must be changed to keep pace with the times. The facts are self-evident:

More than 30 million Americans, one-seventh of our total population, receive a social security check each month. To pay for those benefits, over 100 million Americans, or 90 percent of our work force contributes to social security. Essentially, it is a pay as you go arrangement. But the birth rate has been declining and our population is aging. If the current trends in population continue, the number of workers compared to the number of beneficiaries will continue to drop. It is estimated that the ratio will only be two workers to one beneficiary by the year 2010, or shortly thereafter.

The Social Security Board of Trustees also projects an estimated deficit of 8.2 percent of the taxable payroll over the next 75 years, due to the population shift and other inequities in the program.

While those are just some of the examples of the long-range problems with the present system, the short-term problems are glaringly apparent. As we all know from the headlines, the social security program is headed towards severe cash flow problems in the next few years—so severe that current recipients fear for the program's continuation and those presently contributing to the system that they will never see their money when the time comes for their retirement.

The combined Old-Age, Survivors, and Disability Insurance Program Trust funds are projected to run in the red by late 1981 or early 1982. The Disability Insurance Trust fund alone is estimated to run a deficit by mid-1979.

Despite tremendous increases in the tax rate and the tax base over the years, we see these trust funds going broke in just a few short years. By way of comparison, the social security tax rate in 1937 was 1 percent on a maximum of \$3,000, giving a total tax of \$30 or less! These figures have now risen to a rate of 5.85 percent for social security and medicare combined, to a base of \$16,500 and a tax of up to \$968.25—an increase of over 3,200 percent!

To overcome this projected cash short-fall, President Carter has proposed increasing the taxable wage base upon which the social security tax is levied and to increase the already-too-high rate of payroll tax. He also proposes taking off any limit to the employer's matching contribution to the payroll tax, which could spell financial disaster for many small businesses. In other words, this proposal's short-term solution is just to keep pouring more money into the present system, without addressing the basic underlying factors which are fast bringing about its demise. And, while we may have to deal with short-term measures to keep the system afloat, particularly the Disability Insurance Program, we should do so in the context of a long-term, equitable revamping of the entire system. We can't afford any more aspirins, band-aids and mercurochrome when the illness and cures are much more radical.

I have introduced four bills dealing with the social security program during this session of Congress which will solve some of the inequities that exist. The first two deal with specific inequities and the last two are directed to broader problems.

H.R. 2091 would require Members of Congress and employees of the legislative and executive branches of the federal government to participate in the social security program. If the social security system is such a wonderful program, why do not federal employees and those in Congress—which, after all, was the originator of the system and is now responsible for making desirable changes in it—participate in social security and come under its coverage? A system in which the Commissioner of social security himself does not pay into is not one which the public will believe is all good. It seems to me that if those who oversee the system were also participants in it, they would be more sympathetic to its problems.

H.R. 2092 would require that the earnings limitation test be equivalent to 150 percent of the poverty-level income, as it is now determined by the Secretary of Health, Education and Welfare. It does not seem to be asking too much to let a retired person who wants to work and supplement his income, make only half again as much as the very meager poverty-level income before he begins to be penalized by social security. After all, persons living on unearned income can receive any amount—even a million dollars a year—without being penalized. Why not give the worker a break?

But the two bills which I primarily want to discuss and emphasize for the committee's attention today are H.J. Res. 166, creating a National Commission on Social Security, and H.R. 5064, the Disability Insurance Act Amendments of 1977. The first proposal would lead to a long-term overhaul of the entire system, while the latter deals with major problems of the disability insurance program which is running out of money in less than two years and which has features that inhumanely write-off many disabled people as not being worthy of rehabilitation.

When this committee held hearings during the last Congress, you may remember that I testified before you on legislation that I had then introduced to establish a National Commission on Social Security to examine thoroughly our present social security program in all aspects, to assess its implications and impact, and to consider alternatives. The time was ripe then. It is even more needed now, and I would again like to bring this legislation to the attention of this committee. I am pleased to be able to advise that over 50 of our colleagues have joined me in cosponsoring this legislation. In the interest of brevity, I ask that my complete statement on H. Res. 161 be made a part of the record. It appeared in the Congressional Record on January 19, 1977, at page E 250.

This is a wide-ranging solution that I believe to be much more desirable than the President's "merely more tax" suggestion. This bill would require a comprehensive and complete study of our present social security program in all of its aspects, to attempt to find viable alternatives to a system which many experts and a large, concerned portion of the public believe is no longer viable and/or tolerable.

The question most asked about this idea is, why another study? Why another commission in an already crowded field?

For one reason, we need some fresh thinking on social security. There are Social Security Advisory Councils in existence but they are composed of people appointed by the Secretary of HEW, and staffed primarily from Social Security Administration personnel. My bill foresees a National Commission of people drawn from all walks of life, people with a stake in the system.

In comparison to the bureaucratic "company appointed" Advisory Councils at Social Security headquarters in Baltimore, this Commission of private citizens will travel to all parts of the Nation, and in addition to testimony from experts and economists, will hear from businessmen, retired persons, professionals, widows, working people, single persons—in short, from every element of our society.

Such a commission can work and it's been demonstrated in my own Congressional District. Realizing the immensity of the problem, I asked the citizens of my district for some common sense advice. The result was a grass-roots, volunteer commission which met and reported to me in late 1976. That report contains many of the complaints voiced about the social security system by a vast majority of American people that seem to have been overlooked by the bureaucrats. Too often the elitists think they have all the answers and ignore the common sense desires of the people.

When the citizens committee had completed their initial report, they met with Mr. Gordon Sherman, a Regional Commissioner of Social Security, to inform him of their recommendations. While Mr. Sherman disputed some of the figures that they had used, he could not ignore the concepts of their recommended changes. I might add that the Citizens Committee will be meeting in a regional forum soon, sponsored by HEW.

It is this type of citizen commission that I envision as the National Commission on Social Security.

The National Commission's final report (just as the 4th District report did), will set forth findings and recommendations including, but certainly not limited to, the following areas:

First, the adequacy of the fiscal condition of the present social security programs;

Second, any inequities in these programs based upon marital status, sex, or similar classifications or categories; and

Third, possible alternatives to the current programs, including a substitution of the payroll tax by general revenues, mandatory participation in private insurance programs, and a system permitting individuals a choice of public and/or private programs.

Mr. Chairman, we have a national commitment to a social security system, and we cannot allow that commitment to go unmet because the existing delivery system has become unsuited to our current and future needs. It is time for visionary and bold ideas. My bill, Mr. Res. 166, provides the framework for such ideas.

There is still time for this commission to do a full, in-depth, four-year study of the total social security, but we cannot wait much longer.

Meanwhile, it is imperative that we act immediately to reform the Disability Insurance Program for that program's funds will be totally depleted by mid-1979. While there are problems in many of the public assistance programs, none seem so prevalent as those of the Disability Insurance Program.

We are witnessing a well-intentioned program evolve into a nightmare in terms of its tremendous costs—both financial and social; difficulty in its administration; number of people successfully rehabilitated; and amounts of benefits disbursed—a program which faces imminent bankruptcy, with a total depletion of funds anticipated in just two short years.

The second major bill that I wanted to discuss with the committee today is legislation that I have introduced, H.R. 5064, which would go far in solving the problems of the disability program. I can furnish a section by section analysis on request.

While the cost of the disability insurance program has grown by a factor of six since 1965, the record of termination due to successful recovery has declined. A recent HEW study shows that in 1967, 3.21 percent of all beneficiaries recovered from their disability, and were removed from the program. However, by 1975 that figure had dropped to 1.07 percent. We simply are not getting the results that we are paying for.

The legislation that I have introduced, H.R. 5064, improves the disability program by making the disability process more equitable, giving better representation to both the recipient and the government, reducing the number of nonentitled individuals who are receiving disability compensation, and eliminating the

various work disincentives from the current program. This legislation also provides for liberalizing the earnings limitation amount for determining termination of disability payments, eliminating the second waiting period for medicare eligibility, and extends the second waiting period for medicare eligibility, and extends the trial work period. It accomplishes these changes, while at the same time making the disability program more humanitarian while reducing its escalating costs.

Among the bill's principle features would be a new definition of disability, a definition that would replace the current system's tendency to sentence a person who is disabled to a lifetime of uselessness. By establishing a termination date as well as a beginning date for all disability benefits determinations, except for the "hard core" disabled, we will encourage the beneficiaries to return to work. The Society of Actuaries has estimated that if such a definition had been enacted in 1975, the program costs this year would have been between \$2-2.5 billion less.

Another aspect of the bill would reinstate H.E.W.'s procedure of case review that was used until 1971. By conducting a 100 percent review of all cases, as in the past, approximately 40 percent of all allowances returned by H.E.W. to the states were changed to denials. If such a program had been in effect in 1975, the estimated savings would have been \$2.5 billion, simply by removing ineligible recipients from the program.

H.R. 5064 would also change several of the legal aspects of the disability determination process. The current system simply is not fair to the claimants or to the government. This legislation would establish equality under the law, which would reduce the number of appeals and require the trust fund to be defended at the initial stages of the legal process. It is estimated that just one successful defense of the trust fund would save over \$56,000!

To provide equal treatment in the judicial process, the legislation would provide the services of lawyers at H.E.W. who would be available to both the defendant (the trust fund) and the claimant in these cases. These lawyers would be employed from a list maintained by the Civil Service Commission and they would be rotated such that they would defend the claimants and the trust fund an equal amount of time. One successful defense of the trust fund would be enough to pay the yearly salaries of both lawyers in the case.

Finally, this legislation would require the claimant hearings to be conducted before administrative law judges appointed under the Administrative Procedures Act. It would also prohibit any combination of investigation and adjudication by the ALJ, which happens too often under the current procedures.

In closing, Mr. Chairman, let me state that we must assure those people who are currently receiving benefits under social security that their future is secure and will be provided for. We must also assure those people looking towards the future that the system to be devised will be at least as good and, necessarily, more efficient, more productive, and less costly than the one we currently have.

I believe that by enacting these pieces of legislation we will be taking a giant step towards assuring that future security.

Thank you, Mr. Chairman.

[From the Congressional Record, House, Jan. 19, 1977]

NATIONAL COMMISSION ON SOCIAL SECURITY

(By Hon. Elliott H. Levitas of Georgia, in the House of Representatives,
Wednesday, January 19, 1977)

MR. LEVITAS. Mr. Speaker, together with a growing majority of other Americans, I have had no choice but to conclude that an absolute necessity exists for thoroughly overhauling our entire social security system. This is essential, both to head off the social security trust funds' projected "red-ink" operations within only 3 or 4 years, and also to remedy the program's many current inequities in coverage and benefits.

Accordingly, I am today introducing a joint resolution to create a National Commission on Social Security in order to provide a mechanism for achieving these reforms, and I am pleased to be able to advise that 53 of our colleagues are joining me in cosponsoring this important legislation.

Mr. Speaker, as you may recall, I first submitted this proposal in Congress 2 years ago, and I said at that time that there are too many warning signals about the system's very shaky fiscal ground which we can no longer afford to ignore or minimize. Those warning signals were loud then, 2 years ago, and they have

now become clangorous. In fact, even the official experts on social security are beginning to admit that there is, indeed, cause for grave concern, as evidenced by this final paragraph of the 1976 report from the social security Board of Trustees:

"The Board also recommends that the development of additional plans to further strengthen the long-range financing of the old-age, survivors, and disability insurance program be given high priority."

Further, these same trustees of the social security system, heretofore so sanguine about the inherent future strength of the program finally admitted in their report released last May that even under the most optimistic assumptions possible, the trust funds will be exhausted by the early 1980's. And predicting even further into the future, the report states:

"The long-range actuarial cost estimates indicate that for every year in the future, under present law, the estimated expenditures will exceed the estimated income from taxes."

Turning for a moment now to the logical question of just what would be the impact if Congress does not correct the system's financial crises expeditiously enough, I want to point out that our social security system, with an average daily outlay of \$192 million, is the world's largest social welfare program. With a current annual benefit payment of \$70 billion, one-sixth of this year's Federal budget, social security furnishes \$1 out of every \$20 that the American people receive in income. In all, more than 32 million Americans, one-seventh of our total population, get a social security check each month.

In percentage terms social security helps 91 percent of all persons over age 64, assures that 95 percent of all children under 18 and their mothers will receive benefits if the family breadwinner dies, and gives financial protection to 80 percent of the population between ages 21 and 64 in cases of severe and prolonged disability. Put another way, almost 90 percent of our work force, or 100 million working Americans, have social security coverage.

As we all know, social security was enacted in 1936 to meet an overwhelming need. Pensions and annuities used to be rare indeed, and mighty small when they did exist. In civilian life, the average person was on his own. Either he provided for his own old age—something few could do—or he faced such unwelcome alternatives as living in poverty, moving in with relatives willing to support him, becoming a public charge, or continuing to work, despite illness and old age.

But social security was never intended to be a complete retirement plan that would cover all of a person's needs. It was intended to be a supplement to provide approximately one-third of what a retiree would need to maintain a comfortable standard of living.

Introduced in the early days of the Roosevelt administration, it was designed as an insurance program with mandatory premiums which would maintain actuarial integrity and would provide minimum subsistence. The system was really designed to help rural migrants to urban areas who had no means of providing for their own retirement and who constituted a potential heavy burden on society. A major failing of the concept, in my opinion, is that the supplementary nature of social security benefits has never been adequately publicized and is realized by only a few Americans. All too many people work the bulk of their lives, confidently expecting social security alone or in tandem with a pension to maintain them during retirement at their same level of living, and by the time they realize otherwise, it is too late.

Consequently, social security retirement benefits have had to rise over the State and local welfare programs. Instead of providing one-third of a retiree's income, social security for a lowpaid worker now gives him about 60 percent of the wages he last got when he was working; those who were making a median wage receive about 40 percent; and the higher-paid obtain 30 percent or less of their retirement income from social security—a progressive benefit structure which to some extent offsets the regressive social security tax on employees.

This rise in benefits far beyond the increase in the cost of living over the past 40 years has obviously resulted in great changes in both the tax rate and the tax base—to the point where over half of the country's taxpayers pay more in social security taxes than they do in income taxes. By way of comparison, the social security tax rate in 1937 was 1 percent on a maximum base of \$3,000, giving a total annual tax of \$30 or less. These figures have now risen to a rate of 5.85 percent for social security and medicare combined, to a base of \$16,500 and to a tax of up to \$965.25—an increase of 3,200 percent.

Another way of illustrating this is to take the example of an employee who entered the work force shortly before 1937 and who has paid the maximum social security tax each year since then. His payment into the trust fund last year of \$895.05 represented almost 9 percent of the total contribution he has made over the last 40 years—a total of \$7,763.10 by the end of 1976, plus a matching sum from his employer.

For a number of years, those directly concerned with the social security trust fund have had a growing concern over the ratio of its income to outlays. And in 1975 this worry spread significantly and became full blown when for the first time, and well before the predictions of previous years, the trust fund paid out more than it collected. The unforeseen speed at which this materialized is illustrated by the fact that in March of 1975, the Social Security Advisory Council predicted a deficit of \$2.5 billion, but just 2 months later, the Social Security Trustees estimated it to be \$3 billion, a jump of 20 percent in just 60 days.

In any event, there currently seems to be unanimous agreement that, unless changes are made, the trust fund will be broke and start running in the red some time in 1980 at the latest. This means that social security will be paying out in benefits an average of about \$10 billion more than it collects in taxes during each of the next 4 years. And this is in spite of the fact that the maximum annual contribution for individuals—excluding the medicare tax which was first added in 1966 and has since tripled—has increased almost 1,700 percent over the past 25 years, while the average benefit during that time has risen by a much lower 460 percent.

Two sets of reasons are seen for this bleak picture, one short ranged and the other long ranged. The short-term financing problems are created by higher-than-anticipated inflation, and higher unemployment with a resulting decrease in payroll-tax income for the trust fund—a decrease estimated at \$6 to \$7 billion for 1976 by the Social Security Advisory Council.

The long-range problems involve the "baby boom" that occurred in the years just after World War II and that was followed by the present decline in the birth rate which is expected to continue for an indefinite number of years. Since the post-WWII generation is big and the present generation is comparatively small, and since the former will be about to retire soon after the latter starts to work, there will be relatively fewer workers supporting more retirees.

As a solution, President Ford in his 1976 state of the Union address called for a .3-percent increase in the tax rate, an ineffective and very temporary remedy which, in my opinion, we should not even consider without an accompanying, comprehensive proposal for reforming, revising, and improving the entire system—a plan that was notably absent from Mr. Ford's 1976 speech.

A wide-ranging solution that I believe to be much more desirable than President Ford's "more tax" suggestion today. This bill is an attempt to examine thoroughly our present social security program in all of its aspects and to obtain viable alternatives to a system which many experts and a large, concerned portion of the public believe is no longer tolerable.

Specifically, my measure would abolish the present Social Security Advisory Councils whose members are too closely connected with the executive branch anyway in that they are appointed by the Secretary of Health, Education, and Welfare, with staffs primarily from Social Security Administration personnel. In their place, the bill provides for a national commission of nine citizens to make a careful and intensive study of the entire subject—not to be confined to the limits of the present program—and, after an interim series of reports, to recommend specific proposals for the type of system which will best suit the needs of Americans for the rest of this century and well into the next.

In comparison to the bureaucratic Advisory Councils at Social Security headquarters in Baltimore, this commission of private citizens will travel to all parts of the Nation and in addition to testimony from experts and economists, will hear from businessmen, retired persons, professionals, widows, working people, single-career persons—in short, from every element of our society.

The commission's final comprehensive report will set forth findings and recommendations including, but certainly not limited to, the following areas:

First, the adequacy of the fiscal condition of the present social security programs;

Second, any inequities in these programs based upon marital status, sex, or similar classifications or categories; and

Third, possible alternatives to the current programs, including a substitution of the payroll tax by general revenues, mandatory participation in a private in-

surance program, and a system permitting individuals a choice of public and/or private programs.

Mr. Speaker, we must assure those people now receiving benefits under social security that they will be fully secure and provided for. Further, we must assure those people looking to the future that the system to be devised will be at least as good as and, necessarily, more efficient, more productive, and less costly than the one we now have.

We have a national commitment to a retirement, survivor and disability benefits program, and we cannot allow that commitment to flounder because the existing delivery system has become unsuited to our current and future needs. Our responsibility is to develop an affordable and realistic program to provide true financial security for retirees and for families whose wage earner has died or become disabled.

The time for rhetoric and bandaid-and-aspirin solutions is past. The time for simply taxing people beyond the breaking point is past. Brave and bold and visionary solutions are needed. This bill provides the framework for such solutions. Americans are ready for this approach. A courageous Congress can provide these solutions, and the time for us to do so is now.

Mr. PICKLE. We appreciate you being with us, Mr. Levitas.

It is true that you and I have discussed this. I know you have talked to Chairman Burke about it. I was privileged to have a conference with you and Judge Grossman in your district who gave us very helpful information.

I share your feeling that we have got to make some changes in the disability field.

We have high unemployment, less payroll taxes together with inflation and with the cost-of-living benefits. All those factors have caused a steady decline in social security revenue, and we are headed for big trouble. Unnoticed in all this though is the amount being paid out for disability payments. Oh, it is noticed, but it gets very little of the play in the headlines. It has cost us a great deal of money. I think an index would say that the costs in the disability field are being doubled about every 5 years. Last year, I think we paid out some \$10 billion in disabilities.

So, obviously, we must give close attention to that.

You have introduced a measure and we have talked with Chairman Burke about it. Chairman Burke introduced a bill, H.R. 8057, which would attempt to define a disability as well as establish better guidelines on determination or redetermination. Those are the two main points which you had mentioned. You go a step further. You would provide a face-to-face adversary proceeding so that the questions can be answered at the time.

That creates problems. It may produce more denials, which could save \$60,000 to \$70,000 per claim, just as a rule of thumb. At the same time, we don't know what those additional judges would cost us to hold 150,000 hearings over the country. Yet, if it can be shown that the costs of the additional judges would produce great savings, then we would give much consideration to this.

I remember you told me you thought this bill could save about \$2 billion a year if we adopted this proceeding.

We have asked for comments from the Social Security Administration, and we have received within recent days a report commenting on this approach.

The administration does not recommend or disapprove of the bill as such but points out the problems.

I don't know whether you have been given a copy of that.

Mr. LEVITAS. I have not.

Mr. KELLEY. I would like to point out we don't have any formal departmental report on the bill. This is just strictly a staff analysis of the bill so far.

Mr. PICKLE. Would you give Mr. Levitas a copy of the staff's comments? I just want him to see some of the administrative problems they see down the street. With that as an exchange of views, we will be able to proceed.

Your testimony is timely and it will be helpful to the committee. You are one of the first to point out that something must be done in this field and I appreciate your testimony.

Mr. LEVITAS. Mr. Chairman, may I make an observation at this point?

Mr. PICKLE. Yes.

Mr. LEVITAS. I think your figures are correct. I agree with them that a single successful defense of the trust fund would save about \$55,000 to \$56,000. This system in effect would pay for itself. It may be inappropriate to make the observation, but I will, nevertheless, for what it is worth. There are a number of temporary administrative law judges today who are serving. The creation of this advocacy pool within the social security disability program would provide a means for these people to continue to serve in the system as advocates as we move into this program, and yet, it would not be an additional cost in any sense, because by having a 100-percent review of all the disability cases, as this would provide, based on past experiences of HEW, 100-percent review of cases resulted in approximately 40 percent of all allowances returned by HEW to the States being changed to denials.

That indicates that there are a lot of people who are continuing to receive disability who probably are ineligible. No one wants, obviously, to deny a person who is eligible to receive the benefits he is entitled to, but it takes away from those who are really entitled to it, if ineligible continue to receive benefits beyond the point where they should or initially being received into the system when they should not. I just want to make that observation.

Mr. PICKLE. I don't know whether we could have a 100-percent review of all these cases or not, but it may well be that is the goal we should strive for.

I want to ask you one other question very briefly. In establishing the Advisory Committee, did you set a number on it or try to select them by groups or interests or just anyone who volunteered? How would you go about it?

Mr. LEVITAS. First of all, we had, as I know you have had, a number of people who contacted me expressing concern and interest in the social security problems. We went back through our records and found out who some of these people were. I then tried to select and did select people from various groups, an academic, an insurance actuary, businessman, a number of poverty people, retired persons, in one instance a housewife. We tried to represent on this Committee every economic stratum. There was great participation in this committee. They met on several occasions. They had public meetings. They met and received

the full cooperation of the regional office of the Social Security Administration. After they rendered their final report to me, we passed it on to the Social Security Administration and we got their comments back on it and then had a meeting with the regional administrator and his staff and the Advisory Committee to talk about the points of difference, be they value judgments or factual differences.

Since that time, we have had a number of groups in my district who have asked for that Social Security Committee to come out and meet with them, talk to their civic club or the PTA.

In one instance, I know one of the county school systems in our district met with this Social Security Committee, and it has created a great deal of interest. At the present time, the regional office is setting up a public forum for meeting with citizens in the region, and a member of my staff and members of that Social Security Advisory Committee are working with the regional office in setting up that program. I think one of the reasons they are having that quorum is they saw the benefits that arose out of that Social Security Committee. So that is how it was appointed and basically that is how it has operated.

I think it was a great success and it might be something that others would want comments on.

Mr. PICKLE. Did you submit a report on that to the Social Security Administration?

Mr. LEVITAS. Yes: we did.

Mr. PICKLE. I would like you to give me a copy of that. All of the members may want to do something like that and this committee may want to give consideration to the form of the commission or the establishment of a national commission as you suggest. We have a pending form of an advisory committee. It would be formed by the executive. I am a little bit surprised that you might look with some depreciation on the executive. You are an executive making these appointments. I would think you would have more confidence in your native Georgians. But, I see your point of making this in-house and trying to broaden it.

We appreciate your testimony and we appreciate your coming here and it will be passed on to all the members of the committee.

Thank you very much.

Mr. LEVITAS. Thank you very much, Mr. Chairman.

[The following was subsequently received for the record:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.

SOCIAL SECURITY ADMINISTRATION.

Atlanta, Ga., March 17, 1977.

Refer to: IPO:RA6

Mr. E. M. STEINMANN,

Chairman, Georgia Fifth District Citizens
Committee on Social Security,
Tucker, Ga.

DEAR MR. STEINMANN: If it will be agreeable to you and the 5th District Citizens Committee on Social Security, a meeting can be arranged for April 21 to continue discussion of the issues relating to social security included in your committee report, our comments on your report and your letter of February 15, 1977. I would like to invite you and your committee to meet in the regional office facility at 50 Seventh Street, N. E. (corner of Peachtree and Seventh Streets), Room 222, at 10 a.m. on Thursday, April 21, 1977.

The Assistant Regional Commissioners for Retirement and Survivors Insurance, Disability Insurance, Supplemental Security Income and for Field Opera-

tions are being asked to attend. I would like to suggest that the meeting be informal, with every opportunity for the committee members to participate in discussion of matters which still concern them. The Assistant Regional Commissioners are being asked to review the materials described above and to be prepared to discuss with you the various issues in their particular areas of responsibility.

Please let me know if the proposed date, time and location is satisfactory to you.

I look forward to hearing from you and to meeting with you and the committee.

Sincerely yours,

GORDON M. SHERMAN,
Regional Commissioner.

SOCIAL SECURITY ADMINISTRATION,
BUREAU OF HEARINGS AND APPEALS,
November 22, 1976.

GORDON M. SHERMAN,
Regional Commissioner,
SSA—Atlanta Region;

K. C. BOSTICK,
Acting Regional Management Officer,
BHA—Atlanta Region

BHA'S COMMENTS ON PRELIMINARY REPORT—CITIZENS COMMITTEE ON SOCIAL SECURITY
4TH CONGRESSIONAL DISTRICT, GEORGIA—YOUR MEMORANDUM OF NOVEMBER 9,
1976, IPO:RA6, 6CW2234

As you are aware, there are several errors and misunderstandings in the Citizens Committee Preliminary Report concerning the Bureau of Hearings and Appeals. However, these misunderstandings are so interrelated with confusion regarding the entire SSA internal relationships, program, procedures and appeals process, that to explain the errors away would be to explain the entire program.

We in BHO welcome the Committee's interest and attempt to understand our programs and problems and perhaps a better way to assist them in their efforts would to invite them back again for follow-up discussions. First, however, we should try to make it clear to them why an ALJ or some other SSA manager out in a field office cannot be expected to speak for the Administration.

For instance, we believe that part of the confusion about BHA's mission came from interviewing persons with a relatively brief tenure with the Bureau and program and with rather narrow fields of expertise. For example, the ALJ mentioned on page 10 of the report.

I am sure the ALJ in question looked at a sample of the award notices he and his office had received over the past year or so, and gave his honest opinion as to the average amount of awards. But this ALJ could in no way be reasonably expected to provide accurate and complete data for the entire Social Security Administration, at all levels of appeal. Nor should his answer be considered in any way to be at conflict with the figures provided by the Agency. He merely reported the information he had available—an insufficient sample covering an inadequate period of time.

For these reasons, we would suggest that in the future the Committee submit questions and an outline of major areas of concern in advance, so that we can marshal the facts and figures, and make available experts in various fields to ensure that correct and accurate information is furnished in the future.

K. C. BOSTICK.

FEBRUARY 15, 1977.

MR. GORDON M. SHERMAN,
Regional Commissioner,
Department of Health, Education, and Welfare,
Atlanta, Ga.

DEAR MR. SHERMAN: We, of the DeKalb County Citizens Committee studying the Social Security Program, received your comments on our preliminary report and, in turn, would like to respond to some of your questions and comments.

We shall begin on page 7 of our report and answer some of your annotated remarks.

When we speak of excessive costs, we have in mind the ratio of administrative costs to expenditures. The statistics provided to us did not totally reflect the personnel involved in administering all facets of the program—Old Age benefits, Medicare, SSI, etc. On the basis of our interviews, we found strong evidence of what we have dubbed the “vacuum syndrome”, i.e. each department or section operates in a vacuum and does not know nor, in many cases, does not care what other sections or departments in their group do. This, in our estimation, is abusive and costly to the public. Some other abuses are double dipping, the entire appeals procedure related to disability and vocational rehabilitation claimants and the qualifications of those processing such claims.

We feel that qualified counselors could effectively screen applicants at the front end of the disability claims process and avoid, in large measure, the appeals and reappeals prevalent now. Compassion and mitigating circumstances do play and should play a role but the counselors should be aware also of the costs involved in approving a typical claimant. Their being oblivious to such costs is not in the public's interest.

We find there to be a numbers and terminology game when it comes to vocational rehabilitation costs. Do your comments mean that there is no validity to the twenty million dollar cost for rehabilitating three hundred people given to us during our first meeting with the SSA? Are we comparing apples with oranges because of a difference in the source of funds? What is the actual definition of a rehabilitated person? The avalanche of words and the justification for such rehabilitation expenditures, as expressed in your commentary, do not answer this question. Can we obtain a chart showing actual expenditures for this program and what degrees of rehabilitation, per person, they provide? Does the phrase “persons served” mean individuals served or does it include repeated service to the same individual?

It would be interesting to us to see how the GAO audit came up with a \$1.35 savings for each dollar expended in the VR effort. It would also be interesting to know what additional data the new reporting system starting this year will provide.

On page 8C of your critique, it is implied that the Agency's left hand doesn't know what the right hand is doing. We feel it must know. In each section or department, there must be a person who has general knowledge about all facets of his department's function. He or she should know about work flow charts and be able to answer, in a general way, how the various department functions interrelate. This “coordinator” could also save the public endless hours in their search for specific information on a particular problem.

We should also like to have a clearer understanding of presumptive disability payments (see your comments on page 13A). Do not allegations of deafness, bed confinement, stroke, etc. need to be confirmed by a physician? What is the background and training of the disability adjudicator who passes on these presumptive disability payments?

Have any of the changes proposed in HEW Memorandum 76-82, dated 11-12-76, been adopted?

Have any of the loopholes in the SSI Program, which attained “instant” payments, been changed?

We'd like to arrange to meet with you again to discuss some of the points raised in this letter.

Very truly yours,

E. M. STEINMANN.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,

Baltimore, Md., October 1, 1976.

Hon. ELLIOTT H. LEVITAS,
House of Representatives,
Washington, D.C.

DEAR MR. LEVITAS: This is to acknowledge your letter of September 13, and confirm the telephone conversation between Mr. John Riley, Director of our Congressional Relations Staff, and a member of your staff. We appreciate receiving the copy of the Citizens Committee report, and also appreciate your kind comments about Regional Commissioner Gordon Sherman.

We welcome the opportunity to have representatives from social security meet with the people on your committee and discuss their report. I share your feelings that such a meeting will do much to foster better public understanding of our

various programs. A copy of the report has been sent to Gordon Sherman, and his office will be making the arrangements for a mutually satisfactory date for the discussion. I am sure that Mr. Sherman's office will be in touch with you very soon. I should also add that if any further questions remain unresolved after the discussion has been held, the staff at Central Office will be pleased to assist in any way possible.

Sincerely yours,

JAMES B. CARDWELL,
Commissioner of Social Security.

REASONS FOR THE ESTABLISHMENT OF THE CITIZENS COMMITTEE ON SOCIAL SECURITY

During the summer and fall of 1975, many newspaper and magazine articles appeared which questioned the ability of the Social Security Program to maintain itself without the infusion of additional money from the General Fund of the Federal Budget. The Social Security Trust Fund appeared to be diminishing to the point that by 1980 it would be dissipated. These articles sounded alarm bells for retirees as well as all others who were contributing to the program. They raised additional questions pertaining to the burgeoning payroll of the Social Security Administration and also touched on inequities in the program itself.

A large number of 4th Congressional District residents called or wrote to Congressman Levitas for an explanation or clarification of these reports. A clamor was raised for the Congressman to investigate the root causes of this multi-faceted problem and to introduce legislation which would reinforce and stabilize the keystone of most American's retirement and health plans.

Towards this end, Mr. Levitas selected a citizens committee representing a cross section of the citizens in the 4th Congressional District and consisting of men and women of various ages, backgrounds and occupations.

This committee has been gathering information and conducting interviews with Social Security Administrative Personnel and with related agencies for three months and the results of their findings and observations are detailed later in this report.

Mr. Gordon Sherman, Regional Commissioner, and his staff have offered splendid cooperation in this endeavor. He conducted a lengthy briefing on the entire Social Security Program shortly after the committee was formed which gave an overview which has proved to be beneficial. After this briefing, it was decided to break down the Citizens Committee into teams to ascertain the costs involved in conducting the various social security programs, learn about their operational procedures and attempt to determine the attitudes of those administering the programs. These investigations should not be interpreted as a vendetta against the Social Security Administration but rather a sincere attempt to glean the facts and seek new ways to improve upon the basic program.

Interviews were held with the following:

1. Vocational Rehabilitation—Mr. Arthur Payne.
2. Bureau of Hearings & Appeals—Judge Albert P. Feldman, Administrative Law Judge.
3. Veterans Administration—Mr. Thomas R. Whire, Acting Director.
4. Bureau of Supplemental Security Income—Mr. Carl Walker, Bureau Chief.
5. Civil Service—Mr. Charlie A. Powell, Occupational Health Representative.

A comparison between the Social Security and Civil Service Retirement Programs is also included in this report.

GENERAL BACKGROUND

The size and scope of the social security programs proved to be awesome. From Mr. Gordon Sherman, Administrator for the Southeastern Region, we received general data on the Social Security Administration's Programs which include the overall disbursement of one hundred billion dollars per year. Full time agency employees number 80,000 who serve 32,000,000 recipients of benefits and supplemental income payments. Figures of such magnitude indicate the vastness of the agency and its operations and its influence and impact on the national scene in the socio-economic areas of American life. We were provided with a number of

publications including "The Year in Review", "Social Security Programs in the United States", "Social Security Handbook" and "Social Security Benefits". Interviews with persons in the Disability Insurance Program, Health Insurance Program and Supplemental Security Income Program were arranged. From all of these sources an attempt has been made to gain an understanding of the programs and to reach conclusions on which remedial recommendations might be made. It seems that we invariably encountered the phrase, "We administer to the best of our ability the program as charged under the laws written by the Congress" and "The laws written by the Congress reflect the will of the people".

Additions to the base program since its inception have resulted in tremendous program cost increases, both in administration and benefits. The steep increases in all facets of the program have occurred since 1965 as illustrated in the following chart:

	1965	1975	Percent increase
OASD and HI payments.....	1 18,000	1 54,800	304
Recipients.....	21,000	1 27,236	130
Net contributions.....	1 16,000	1 65,000±	406
Maximum withholding.....	174.00	875.00	503

¹ In millions.

The net result of such increases has been the depletion of the reserve fund to about 25 percent of that required by law. Furthermore, projections show that the current program will be operating in the red by 1980 unless substantial additional funding is provided.

The Social Security Program, as explained to us, is not a personal retirement plan comparable to any other plan available in the private, Federal, Municipal or State Government sectors. The Social Security Program was designed, by law, to be a social compact which provided, in part, to individuals, a means to provide for themselves when they were no longer active breadwinners. The extensions of coverage, liberalization of benefits, which are tied to the cost-of-living index, contractions in the economy and the decline in the ratio of workers to recipients have helped to create the current dire financial condition and outlook for the program as illustrated in the following chart:

OAS AND DI FUNDS

[In billions of dollars]

	1971	1975	1980
Income.....	40.9	67.6	110.6
Outgo.....	38.5	69.2	117.9
Surplus/deficit.....	2.4	(1.5)	(7.2)

On the other hand, we are advised that somewhere between 15 to 20 percent of all U.S. workers are denied the privilege of participating in the humanitarian endeavor that is the Social Security Program. These non-participants include some employees of the Federal government, members of the Armed Services, Railroad employees of State, County and/or Municipal Governments. We have given to understand that, in the retirement programs for these exempt workers, contrary to Title 2, individual accounts are established and all payments accrue to the benefit of the individual participant. There is no sharing of the cost of benefits between high and low income participants within the plan. There is certainly no sharing by them with those under the Title 2 program.

The fact that Social Security administers Title 2 Retirement, Survivors & Disability Insurance Program, Title 18—Medicare Program, Title 16—Supplemental Security Income Program and Black Lung Program seems to cause misunderstandings because of the differences in eligibility criteria and the source of program funds.

The original intent of the Title 2 program underscored that the benefits thereunder are "earned rights" designed to replace, in part, the loss of income due to

retirement or disability. They also include death benefits to the dependent survivors of the deceased wage earner.

Benefits under Title 18 are paid partially from Social Security taxes and partially from modest premium payments by the participants, with the balance being paid from General Funds.

Benefits under Title 16—Supplemental Security Income Program are paid solely from General Funds and eligibility is based entirely on need. Comparative figures for selected years in the following table illustrate the accelerated increase in beneficiaries under these programs.

BENEFICIARIES				
[In thousands]				
	1950	1960	1970	1975
Retirement and survivor insurance program.....	3,500	15,000	25,000	28,400
Disability insurance program.....		600	2,900	4,124
Supplemental security program.....			1,584	4,189

¹ 1974.

It was reported that placing the SSI Program within the Social Security Administration has resulted in many problems and has essentially doubled the agencies' work load.

It is further reported that other plans, including Railroad Retirement, and many local government plans are underfunded. Deficits in these plans administered by Social Security are made up from the General Funds of the Federal Treasury. There are reported abuses of all programs administered by Social Security. There are admitted areas for change in all programs, but invariably such changes seem to require a change in the laws under which the programs are administered. Administration costs and effectiveness are strongly defended. Wherever these costs or program abuses seem excessive, the fault seems to lie in the legislation involved. It is possible for persons to qualify for Title 2 benefits with a negligible earnings record under Social Security. "Double-dipping" often results in workers drawing retirement benefits from several plans, the total of which often exceeds an individual's highest earnings during his working years.

A particularly astounding revelation concerned the rehabilitation cost of disability recipients in Region IV. It was reported to have cost 20 million dollars to rehabilitate 300 persons during the year 1975. This computes to an average cost of approximately \$67,000 per person. Subsequent information in a letter from Stanley J. Smits, dated June 9, 1976, to Albert P. Feldman, Administrative Law Judge, indicated that the national average cost per successful rehabilitation for the year 1975 was \$2,641. Based on the supportive data attached to this letter, we were unable to reach the same conclusion. Professor Smits works at Georgia State University in the Department of Counseling and Psychological Services. His information came from the State Vocational Rehabilitation Agency Fact Sheet Booklet published by HEW.

In general, people interviewed were most gracious, accommodating and knowledgeable with respect to their specific duties and responsibilities. However, each seemed to operate in a vacuum in relation to the whole. Possibly this should not be surprising in an activity involving so many people, both in number of employees and recipients. There seemed to be little or no concept of costs outside the area of personal income and benefits.

VOCATIONAL REHABILITATION

Interviews made with the Vocational Rehabilitation Agency, Department of Human Resources and the S.S.I., at No. 1 West Court Square in Decatur, revealed the following: The budget for funding of this department comes from the Social Security Administration but is administered through the State of Georgia. Department counselors are State, not Federal, employees. Preliminary files are prepared in the Regional Office and then forwarded to the Disability Adjudication Section of the State Vocational & Rehabilitation Agency for evaluation. The sole function of the department is to decide who is eligible to receive disability benefits. The candidate for disability files in the county in which he is a resident. The application is then sent to Vocational Rehabilitation for consider-

ation. Vocational Rehabilitation attempts to obtain a claimant's medical records from doctors and hospitals. If these cannot be obtained without charge, a fee of \$8.00 per doctor and \$3.00 per hospital is allowed to procure these records. The candidate must sign a written release allowing such records to be reviewed by Vocational Rehabilitation so as to comply with the Right to Privacy Act.

The department is not allowed to accept solely the opinions of a candidate's personal doctor. Clinical examinations must substantiate the diagnosis. An average of \$40.00 to \$60.00 is allowed for additional examinations and doctors' reports. The fee schedule is as follows:

Internist	\$42
Orthopedic	42
General Practice	25
Psychiatric	52

These fees are paid by Vocational Rehabilitation.

The State of Georgia Vocational Rehabilitation Office processes between 8,000 and 10,000 applications per month. The agency administrative budget for the last eighteen months—July 1, 1974 through December 31, 1975—was \$5,601,279.79. Medical costs amount to \$2,191,000.00 of this total; department and employee costs account for the rest. The agency stated to us that the average benefit cost for each individual approved is \$25,000. This amount is half the figure obtained from an interview with an Administrative Law Judge.

A claimant's final recourse upon review and denial by Vocational Rehabilitation is to request a hearing before an Administrative Law Judge. There are seven-teen administrative law judges serving the Southeastern Region.

Nationally available data indicates that about 35 percent of all denials are appealed, that 50 percent of these are reversed, 57 percent of all applicants are ultimately approved for disability benefits. Some Vocational Rehabilitation personnel interviewed thought this percentage was a conservative figure.

The National trend in number of persons receiving benefits under the Social Security Disability Program is illustrated in the following tabulation:

	1960	1970	1975
Disabled workers	455, 371	1, 492, 948	2, 362, 582
Disabled widows		49, 281	
Children of disabled workers	155, 481	88, 600	1, 332, 683

No one interviewed in the Vocational Rehabilitation Agency was aware that the cost of rehabilitating 300 people in Region IV in 1975, was 20 million dollars or a cost of \$67,000 each. Furthermore, no one had any idea of the total costs of the program resulting from decisions made by the agency.

It was surprising to learn that, unless a case is marked for a special, semi-annual follow-up, the claimant receives disability income for life. Those individuals marked for follow-up must cooperate with their Vocational Rehabilitation Counselor or they will lose their benefits.

A claimant's medical history is well established during the Vocational Rehabilitation review but oftentimes the Administrative Judge, who hears the appeal, will require additional physical or psychological tests. Job Counselors may also interview the claimant as directed by the Administrative Law Judge. The fee schedule for such professional examinations or reviews is appended to this report. The staff of an Administrative Law Judge consists of a law clerk and/or lawyer and a legal secretary. A Law Judge's salary is \$30,000 to \$37,000 annually. The Administrative Law Judge interviewed complained about an inadequate office space, equipment and staff which caused delays in scheduling hearings.¹

Because of the high percentage of appeals and reversals of Administrative Law Judge's decisions, it was considered appropriate to pursue the matter further with the Appeals Council located in Arlington, Virginia. Mr. Jack Camilleri, Manager of the Council, was contacted by telephone and gave us the following information:

1. Once an Administrative Law Judge makes a negative determination, the next step for a claimant is the Appeals Council to which they must appeal within sixty days.

¹ Abstract of Social Security, April and May 1975, page 3 (E).

2. The Council has nine members, all of whom are attorneys. When a vacancy is created, the Social Security Administration will run an ad in the Washington, D.C. area newspapers for a replacement.
3. A group of analysts review a claimant's file first; if needed, a Medical Advisory Committee will do the same.
4. The file and recommendations then go to a nine man Council. A claimant can appeal to this Council indefinitely if not satisfied with their decisions.

It should be noted that a claimant can file suit through a Civil Court if he feels the appeals process is unsatisfactory.

SUPPLEMENTAL SECURITY INCOME

Supplemental Security Income took the place of the Welfare Program in 1974. This program as defined by SSA provides aid for "the aged, disabled and blind". A large number of these people have never contributed to the Social Security Program. This program is administered by the Social Security Administration and paid for out of the General Fund. This includes employee salaries in the department. The staff increased from 12,000 to 14,000 in 1974. There is no waiting period with S.S.I.

S.S.I. will pay a person up to three months of benefits while making a decision on that individual's eligibility. For example, any person who may be struck down by a heart attack and who would have to wait a minimum of five months to receive Social Security benefits can get immediate aid from S.S.I. If S.S.I. should decide the person is not eligible, the claimant does not have to repay the funds to S.S.I. While S.S.I. has no restriction on age, welfare had an eighteen year minimum age requirement. A child may receive benefits under S.S.I., if deemed eligible, with the benefit amount dependent on his family's income.

An applicant must inform S.S.I. if he is receiving other benefits such as food stamps or V.A. benefits. Such additional benefits will reduce the cash amount received from S.S.I. Food stamps do not affect the cash totals.

The maximum allowance for S.S.I. is \$157.70 per person with no other income; \$236.00 per married couple. As of July 1, 1976, there will be an 8% cost-of-living increase.

Among other considerations, in order to be eligible, a person must meet the following requirements:

1. May own home valued at not more than \$25,000.00.
2. May own car valued at not more than \$1,200.00.
3. Not have more than \$1,500.00 life insurance.
4. Not have more than \$1,500.00 liquid assets in bank.

There are many people who apply to S.S.I. who would not have applied to welfare because of the stigma attached to the welfare program. The Welfare Program, replaced by S.S.I., would not permit an individual to remove assets from a bank twelve months before applying for welfare benefits. There is no time restriction under S.S.I. If a person has more than \$1,500 assets in the bank, he can transfer the amount exceeding \$1,500 to a friend or relative the same day he applies for benefits.

The recourse available to a person if he is denied S.S.I. benefits is as follows:

1. He may reapply to the office where he was denied and have his application reviewed by a different counselor.
2. Obtain a hearing before an Administrative Law Judge.
3. Obtain a Federal Court hearing.

Approximately 50 percent of the cases are approved on review and 40 percent of those denied initially will refile for reconsideration. Approximately one-third of the denials are overturned and approved before they reach a law judge. There are known cases of an individual going the full course of review, being turned down and then refiling time and time again. There is an office in Alabama which does nothing except deal with fraud cases.

CIVIL SERVICE

We thought it propitious to compare the Social Security Program in all its aspects with the Civil Service Retirement Program whose participants administer the Social Security Program.

It was found that in 1969 there were 2,880,000 Federal civilian employees; in 1975, the number of Federal civilian employees was 2,770,000. Disbursements from Civil Service Retirement Fund rose from \$2.4 billion in 1969 to \$7.2 billion in 1975, and are anticipated to be \$15 billion in 1980. Employee and agency

matching contributions were \$2.8 billion in 1969, \$5 billion in 1975, and are expected to be over \$6 billion in 1980. Income to the Fund in the year ending June 30, 1976 was approximately \$11.4 billion; expenses for the year were approximately \$7.2 billion. At the end of the fiscal year 1975, the total Fund amounted to \$38.4 billion, leaving a net unfunded liability of \$97.2 billion.

FUNDING

Prior to 1970, funding of the Civil Service Retirement and Disability Fund was provided primarily through payroll deductions and equal contributions by the employing agencies. Since 1970, funding has been provided from the following five main sources:

1. Deductions from the pay of employees who are members of the Civil Service Retirement System.
2. Equal contributions by the employing agencies.
3. Payments from the U.S. Treasury for interest on existing unfunded liability.
4. Appropriations from the U.S. Treasury to meet liabilities which result from liberalization of benefits voted by Congress.
5. Interest earned through investment of money received from the first four sources in Government securities.

Deductions from the pay of employees and contributions by the employing agencies have risen from 2½ percent of basic pay, starting in August, 1920 to 7 percent of basic pay beginning in January 20, 1970.

Payments from the U.S. Treasury for interest on unfunded liability and appropriations to meet liabilities which result from liberalizing benefits were provided for in Public Law 91-93 enacted in 1969, when it was determined that contributions by the employee and agencies were not sufficient to fund the future benefits to be provided. Example; Cost-of-living increases and liberalization of annuity computing methods. Payments by the Federal Government into the Retirement Fund amounted to \$2 billion in 1970, \$6.7 billion in 1975 and are estimated to be \$12 billion by 1980.

BENEFITS

The Civil Service Retirement and Disability Fund has many similarities to private funds when benefits are considered. Contributions made by the employee belong to the employee, and may be withdrawn upon the separation of the employee. If the employee has a minimum of five years service, upon separation, he may choose to withdraw his contribution or select an annuity with benefits beginning at retirement age. Once the employee has earned the retirement right, there are no restrictions regarding future earnings in other employment. In fact, the employee may retire at age fifty-five on full pension, enter private employment, earn Social Security coverage and become eligible for two pensions.

RECOMMENDATIONS

Based on the accumulated data presented in the body of this report we feel that firm steps, some sweeping and some in response to specific flows in the system, should be taken at once. Some of the needed changes are procedural and point to poor administrative practice and others must be brought about by swift legislative action in the U.S. Congress.

Is the Social Security Program a viable one as it stands? Yes—but we strongly feel that the program should include citizens who are exempt now because of their affiliations with the Civil Service, Railway Retirement and Armed Forces Retirement Programs. The Civil Service Program includes members of both Houses of Congress and their staffs. With a near zero population growth, the ratio of Social Security contributors to recipients is approximately 3:1. By adding the Civil Service, Armed Forces, Railway Retirement groups to the rolls, as well as municipalities¹ presently opting to stay out of the plan, we would increase the number of donors to the program by 16-20 percent. (Depending on whose figures one accepts concerning the number of Federal, State and Municipal employees to be enrolled.)

Those in the Civil Service, for example, would receive Medicare/Medicaid and Survivors benefits which are denied them now.

¹ New York City has applied to get out of the Social Security Program in 1980 taking with it 380,000+ people.

Our taxes provide the salaries of Federal, State and Municipal employees and we see no reason why we should continue to pay for the duplicated administrative costs of these "private", privileged retirement plans. Both the Civil Service and Railway Retirement plans are operating at a deficit which is made up from the General Fund.

The merging of Social Security and these other plans would go a long way towards eliminating "double-dipping". Self-employed people should have the same status as an employee whose contributions are matched by his employer. All our people should be required to pull an oar to propel this program along for now and for future generations. Studies² by Congressional Committee since 1936 have failed to find a way to merge the Civil Service and Social Security Programs. We cannot ignore the problem involved, but the committee feels the Congress can legislate this merger if they are not swayed by political considerations.

Does the public have full understanding of the Social Security Programs? Emphatically no! Most people feel they have an individual account in their name which will provide them with retirement income. It is believed also that the income received will be in exact measure with that which they have contributed. In short, it is a firmly held belief that the contributor to SS will get out of the program (in dollars) what he has put in.

There is little or no understanding of the value of survivor and disability benefits. It is not realized that those in Social Security have entered into a social compact in which they will, proportionately, with their contributions assist others in the program.

The Social Security Administration should be required to distribute an annual publication or pamphlet which in simple terms spells out the magnitude of the program, and how it has been expanded over the past ten years. This pamphlet should also illustrate the inflow and outflow of funds and the sources from which these funds are derived. Estimates of the costs of new programs should be submitted to all participants for consideration before legislation is enacted. A national referendum involving major changes in the system should be considered.

The Congress should seriously consider freezing the cost-of-living increases presently built into the system. To do so will inevitably mean effecting a similar freeze in all other contracts. If such a freeze proves unacceptable, then in all fairness, cost-of-living adjustments should be extended to private pension programs, and savings accounts, so that those who attempt to provide for their own needs will not be penalized by the inflationary erosion of their private funds. Any extension of benefits should be accompanied by proportionate tax increases so there is no deficit financing of such benefits.

How has the SS program been expanded in the last 25 years? Congress has added Medicare-Medicaid, Disability Insurance, Supplemental Security Income, Survivors Benefits as well as automatic cost-of-living increases.

Because of this proliferation of benefits and its related administrative burden, we suggest strongly that a "Watch Dog" National Commission be appointed by Congress. We have pointed out some of the apparent inefficiency and ineptness found in the Social Security Agency and related agencies and feel aggressive surveillance can contribute much to eliminating such waste. We feel a continuing cost effective analysis of programs, procedures and activities should be made a part of the commission's responsibility.

Consequently we would like to see this National Commission carefully screen any changes or extensions proposed by the Social Security Agency, pertaining to laws governing this body.

How have these expanded benefits affected the SS budget? The SS Trust Fund has been reduced to 25 percent of the sum required. The payroll deductions for all participants will be more than 6 percent in 1977. The salary base from which deductions are made will exceed \$15,000 next year.

Social Security payrolls have increased to 80,000 people and this figure does not include those supporting the program in related functions.

There has been a commingling of benefits; some based on the "earned-right" doctrine and others which could be categorized as welfare benefits.

Is the Disability Program being properly administered? No. We feel there are too many reapplications or appeals for aid after an initial denial has been made. Reconsideration is possible on the Vocational Rehabilitation level or when pre-

² Committee Print No. WMCP: 94-127 of the Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives.

sented to the Administrative Law Judge, and when passed on to the Appeals Council.

We agree that a claimant's condition can change, but we feel that a more thorough investigation and responsible determination should be made at the lowest possible level of review.

We understand the first physician's report carries great weight and instead of starting an applicant up the appeals ladder, we feel another physician's thorough examination should be in order.

Instead of Administrative Law Judges ordering additional medical or psychological tests, they should require the Vocational Rehabilitation Agency to have properly and fully prepared the groundwork, except in highly controversial situations. The same judges should be made to realize what they individually are authorizing in expenditures through their decision. Their compassionate approach to the cases presented is commendable but not if it affects adversely the functioning of the overall program.

Vocational Rehabilitation—is this program being properly administered? No. The same syndrome pertaining to costs prevails here.

We feel an annual conference with VR counselors, for those who are required to report, should be sufficient. Any changes in progress would be clearly discernable and the cutting down of what appears to be superfluous interviews with those being rehabilitated should produce cost savings and enable the counselors to provide more in depth counseling. The \$8.00 fee charged by doctors for a claimant's medical records and/or the \$3.00 per record charged by hospitals should be eliminated. At a conservative rate of 8,000 claimants per month, this on doctor's fees alone would save the taxpayer \$64,000 per month.

Supplemental Security Income—is this program being carefully administered? No—but the agency is concerned about the absurd and overly liberal application and reapplication format under which they operate. Many people who are denied aid, can reapply and in effect, "ride" this system for an indefinite period of time. As has been previously stated, this loophole allows vast expenditures which are neither the intent nor the spirit of the law governing this program.

The abrasive practice of the transferring of funds out of the claimant's bank account should be thoroughly investigated by the proper authorities.

A longer waiting period, after a claim is made is essential, except in those instances of desperate need. The "old" welfare program insisted on a waiting period, in which time applicants were more thoroughly screened. Waste is rampant here.

As a final comment, we feel that the agencies we have studied play a "numbers" game with the public and are misleading. As an example the Social Security budget submitted to us by the Social Security Agency does not agree with the one offered by the Library of Congress.

Mr. PICKLE. We have a panel now consisting of the National Rehabilitation Association, Mr. Carl Hansen, from the University of Texas, president-elect, with Mr. R. Lewis Urton: the Council of State Administrators of Vocational Rehabilitation, Mr. Thorold S. Funk, from Charleston, W. Va., and Lorraine Cronin, who is a member on the Committee on Social Security Relationships and who is the Assistant Commissioner of the Massachusetts Rehabilitation Commission.

PANEL CONSISTING OF CARL HANSEN, PRESIDENT-ELECT, NATIONAL REHABILITATION ASSOCIATION, AND R. LEWIS URTON, MEMBER, COMMISSION ON INTERNAL AFFAIRS; THOROLD S. FUNK, DIRECTOR, DIVISION OF VOCATIONAL REHABILITATION, CHARLESTON, W. VA., AND LORRAINE CRONIN, ASSISTANT COMMISSIONER, MASSACHUSETTS REHABILITATION COMMISSION, ON BEHALF OF THE COUNCIL OF STATE ADMINISTRATORS OF VOCATIONAL REHABILITATION

Mr. PICKLE. Do each of you have a statement you wish to make or submit for the record?

Mr. HANSEN. We have a prepared statement already filed and we will make brief verbal remarks here today.

Mr. PICKLE. Do each of you have a statement to file?

Mr. HANSEN. I will make the statement for the National Rehabilitation Association and Mr. Funk will make the statement for the Council of State Administrators of Vocational Rehabilitation.

Mr. PICKLE. You may proceed. We will enter your statements for the record and ask for additional statements from other panelists.

STATEMENT OF CARL HANSEN

Mr. HANSEN. It is a pleasure to be before this group today, particularly since my own Congressman is chairing this meeting today.

In my capacity I am representing the National Rehabilitation Association, which is a membership organization of approximately 30,000 individuals.

Accompanying me today is Mr. Lewis Urton, deputy commissioner, Arkansas Rehabilitation Services, State of Arkansas, who has been in rehabilitation for over 30 years.

We are specifically appearing to speak in regard to the Social Security Disability Amendments of 1977, H.R. 8076. Testimony will be presented later today by Dr. Richard Baker, who will be representing a division within our national organization who will speak to some of the positive points found in H.R. 5064, the Levitas bill, particularly as they pertain to rehabilitation processes.

Since our written statement is already on file, I am only going to make a few verbal comments about some of the sections found in 8076.

I would like, first of all, to discuss section 4, the disability determination under State agreements.

This section basically contains the provision that SSA will have the authority for the takeover of employees of State disability units in order to prevent program disruption.

Provisions are made to protect the pension rights and other fringe benefits of these employees.

This action would mean that no disruption of the referral process to VR would occur in the event an agreement with the State and the Secretary is terminated.

We are in agreement that the Secretary should take action of this nature only as a last resort and only when there is no question or doubt that a State agency cannot effectively administer the program and no meaningful effort is taken by the State government to remedy this situation.

It is our position that close and meaningful cooperative relationships among public human services organizations are essential if the efforts at all governmental levels are to be successful in meeting the needs of the Nation's handicapped citizens.

The common purpose of these organizations demand to a great extent the development and maintenance of such relationships in the provision of services.

Vocational rehabilitation agencies throughout the country are generally responsible for assisting disabled individuals toward gainful employment, and are dependent to varying degrees upon other human

services organizations in the procurement of referrals of such individuals for services.

Among such referral sources are the disability determination units of the Social Security Administration which exist in all States to screen applicants for social security disability insurance benefits, and to make decisions concerning their eligibility for such benefits.

It is imperative, therefore, that close relationships exist between these units and the State vocational rehabilitation agencies in that the latter are allotted Social Security Administration trust funds for providing rehabilitation services to social security disability insurance applicants and beneficiaries in trying to help them return to employment.

We are in agreement with the concept of an "appeals court" realizing that although it does not directly affect the vocational rehabilitation process, it will provide relief for currently congested court dockets, will relate directly to the legal process relevant to disability appeals, and in general, should speed up the appeals procedure.

However, of primary concern to those of us in vocational rehabilitation is the provision that spells out in detail the process whereby a claimant at his or her option can ask for reconsideration in a face-to-face conference with an SSA representative, that is, a disability examiner.

This will eliminate the current problem of "paper" decisions rendered only on a review of the case file.

We feel that in these instances where this option is exercised it could add a human quality and more validity to the disability determination process.

In fact, we would like to see some of these individuals also be accompanied by vocational rehabilitation counselors that could assist in the determining factors of can this person enter the labor market or can he not successfully enter the labor market.

As to section 6, dealing with the earnings level for determining substantial gainful activity, we are especially pleased with your proposal to provide opportunities for the SSA Commissioner to have authority to develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of treating the work activity of disabled beneficiaries under the old-age, survivors, and disability insurance program including such methods as a reduction in benefits based on earnings designed to encourage the return to work of disabled beneficiaries so that savings will accrue to the trust fund.

We believe this to be a forward looking concept that will provide a basis for making determinations in the future as to the most realistic approaches to encourage recipients to return to work.

Period of trial work, section 7.

Under the current law, the trial work period provision was clearly enacted as an incentive to rehabilitation of the disabled.

It was, and still is, intended to provide a 9-month period during which the severely impaired person could test his ability to return to and sustain competitive employment.

While it is conceded that generally the intent of the provision has been fulfilled, certain aspects of this provision need refinement or rethinking.

For example, as currently administered, any month in which earnings are under \$50 is not counted as a trial work month.

This amount is clearly too low in today's earning economy and doesn't represent a true test of work capacity.

Frequently, a beneficiary uses up a significant number of months of a trial work period while making sputtering efforts to work while undergoing rehabilitation.

Consequently, when he finally reaches a productive earnings level, the trial work period may be exhausted and he is immediately faced with benefit termination before he has consistently and regularly demonstrated that he can sustain competitive employment.

Furthermore, if he continues to work for a period of time, and subsequently, within 5 years his impairment worsens or he loses his job, he may not have another trial work period.

The uncertainty of the trial work period and when it will end makes it difficult for the counselor and beneficiary to adequately plan and often interferes with rehabilitation efforts.

One class of beneficiary, the disabled widow or widower, is not entitled to the trial work period at all. These particular aspects of the trial work period provision adversely affect serious rehabilitation efforts.

It is our impression that a 24-month trial work period will stimulate work incentives. It differs from the current law in that it has a period of complete income exemption for 12 months while during the final 12 months there is benefit suspension but no loss of eligibility.

Also, medicare benefits continue for 24 months after loss of eligibility as long as the individual does not medically recover. This is an excellent provision and can do nothing but enhance the SSA-VR programs.

Section 8, vocational rehabilitation services for disabled individuals.

This section would simplify and provide for better administration of the VR funding sources through consolidation.

It also authorizes bonus Federal matching of State regular VR expenditures for those individuals rehabilitated and remaining off the SSA rolls for 12 months.

This proposal also provides for bonus matching of workshop client's rehabilitation expenses, and would require that these clients receive wages for a 12-month period after closure.

Section 10, elimination of requirement that months in medicare waiting period be consecutive.

This section eliminates the provision in the law that requires an individual who has gone off the SSA disability rolls to wait another 24 months after he is in benefit status again before he can receive medicare/medicaid.

This would eliminate one of the greatest disincentives found in the SSA-VR program.

Many beneficiaries have ongoing medical needs and expenses and cannot afford to participate in a VR program that would jeopardize their medicare/medicaid eligibility.

This concludes our verbal remarks. We are pleased to have been able to make these comments today.

[The prepared statement follows:]

STATEMENT OF THE NATIONAL REHABILITATION ASSOCIATION, INC.

Mr. Chairman, I am Carl Hansen, President-Elect of the National Rehabilitation Association. I also serve as an expert witness in the provision of vocational testimony for the Bureau of Hearing and Appeals which is a part of the Social Security Administration. Here at the witness table with me is Mr. R. Lewis Urton, Deputy Commissioner of the Division of Rehabilitation Services for the State of Arkansas. Mr. Urton is a life member of the National Rehabilitation Association and also serves on the Association's Commission on Internal Affairs. Mr. Urton has devoted more than thirty years of his professional career to vocational rehabilitation programs and has had extensive experience in the coordination of services with the Social Security Administration and Vocational Rehabilitation. We appear before you on behalf of the Association and in support of the programs and services to be made possible through the Social Security Disability Amendments of 1977, specifically H.R. 8076.

The National Rehabilitation Association's membership of approximately 30,000 individuals has been represented before the Congress on many occasions during its fifty-two years of existence, and we feel certain that the impact of our Association on the rehabilitation movement in general and on the lives of handicapped people in particular is secondary only to the actions of Congress.

Chairman Burke, we personally commend you for your prompt action in conducting these hearings on the proposed Disability Insurance Amendments of 1977. We recognize and are grateful for your concern for offering realistic solutions through these amendments to many perplexing problems that have developed through the years in the State/Federal partnership relating to disability determination and vocational rehabilitation services.

At your pleasure, we wish to comment on pertinent sections of the proposed amendments as they appear in H.R. 8076.

Section 2. Financing of disability insurance trust fund

We support the concept of a separate tax reserved specifically for the disability insurance program that will allow for identification of costs as related to separate program components. We believe that this approach will guarantee an adequate funding base for the program for several years in the future.

Section 3. Definition of disability

We support the expanded concept of disability for those applications of age 50 and older to include inability "to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity over a substantial period of time". This, we believe, allows a person's ability or inability to work to be determined upon his or her own past performance rather than a judgment of such being made against a list of specified available occupations.

Section 4. Disability determination under State agreements

This section basically contains the provision that SSA will have the authority for the take-over of employees of state disability units in order to prevent program disruption. Provisions are made to protect the pension rights and other fringe benefits of these employees. This action would mean that no disruption of the referral process to VR would occur in the event an agreement with the state and Secretary is terminated.

We are in agreement that the Secretary should take action of this nature only as a last resort and only when there is no question or doubt that a state agency cannot effectively administer the program and no meaningful effort is taken by the state government to remedy the situation.

It is our position that close and meaningful cooperative relationships among public human services organizations are essential if the efforts at all governmental levels are to be successful in meeting the needs of the Nation's handicapped citizens. The common purpose of these organizations demands to a great extent the development and maintenance of such relationships in the provision of services.

Vocational rehabilitation agencies throughout the country are generally responsible for assisting disabled individuals toward gainful employment, and

are dependent to varying degrees upon other human services organizations in the procurement of referrals of such individuals for services. Among such referral sources are the Disability Determination Units of the Social Security Administration which exist in all states to screen applicants for Social Security Disability Insurance benefits, and to make decisions concerning their eligibility for such benefits.

It is imperative, therefore, that close relationships exist between these units and the state vocational rehabilitation agencies in that the latter allotted Social Security Administration Trust Funds for providing rehabilitation services to Social Security Disability Insurance applicants and beneficiaries in trying to help them return to employment.

Furthermore, there is an on-going need for information exchange between vocational rehabilitation agencies and disability determination units concerning service provisions and case dispositions. This can best be accomplished if there is close cooperation and mutual understanding between the organizations relative to policy and procedures, information needs, and Privacy Act provisions.

Close cooperation between vocational rehabilitation agencies and disability determination units should result in more expeditious and meaningful services to individuals. State level administration of the disability determination units is essential to the maintenance of such necessary close cooperation.

Ideally, disability determination units should be administered by the single state agency designated to administer the vocational rehabilitation program. Such an arrangement is very beneficial through:

- (a) Eliminating or minimizing time delays in the referral process;
- (b) Minimizing constraints on the flow of information;
- (c) Maintaining emphasis on the rehabilitation needs of Social Security Disability Insurance applicants and recipients;
- (d) Insuring a more coordinated assessment of the needs of these applicants and recipients;
- (e) Insuring the more timely provision of rehabilitation services to these applicants and recipients; and
- (f) Increasing and maintaining the awareness of practitioners in each program of the policies and procedures of the other.

If the Congressional mandates for increasing the number of Social Security Disability Insurance applicants and recipients who return to gainful employment are to be met, then the maintenance of close cooperation between vocational rehabilitation agencies and disability determination units is imperative. This can best be accomplished at the state level by organizations that have many years experience in assessing the needs of and serving disabled individuals. Only the vocational rehabilitation agencies meet this requirement.

Information previously provided you by the Council of State Administrators of Vocational Rehabilitation regarding joint responsibilities of both the State and Federal governments is presented as a summary of our position as to what these responsibilities should be:

(a) *Joint Responsibilities.*—The Federal and State governments have a joint responsibility to work together in mutual support and reciprocal accountability to better serve disabled claimants who apply for benefits under the provisions of the Social Security Act by:

- (1) Providing claimants with information as to rights, responsibilities, and status of claims;

- (2) Adjudicating claims promptly and accurately;

- (3) Assuring prompt payment of benefits;

- (4) Identifying individuals who have rehabilitation potential; and

- (5) Restoring applicants to gainful activity, where possible.

(b) *State Responsibilities.*—The State partners have primary responsibility to:

- (1) Adjudicate claims in accordance with Federal law, regulations, guidelines, standards, and interpretations;

- (2) Establish organizational arrangements which will accommodate an expeditious processing of claims and the highest possible quality of services;

- (3) Develop management techniques which will accommodate sound internal administration and enable the fulfillment of Federal program requirements;

- (4) Maintain the highest standards possible within the limits of budgetary authorizations and appropriations; and

(5) Establish and maintain cooperative working relations with the medical profession and other relevant organizations and agencies within the State.

(c) *Federal Responsibilities.*—The Federal partner has primary responsibility for:

(1) Establishing adjudicative policies, standards, and guidelines and for making uniform and timely communications to the States regarding changes therein;

(2) Providing the necessary resources to achieve the desired program goals and objectives;

(3) Monitoring the programs without interfering with the daily state operations or internal arrangements; and

(4) Maintaining a liaison on a national basis with the medical profession and other national organizations and agencies which may impact on the program.

We believe that with continued emphasis on the State/Federal partnership and recognition of our mutual responsibilities, we can continue to achieve our common goal of a high level of services for clients of both the Social Security Administration and the state-operated rehabilitation programs.

Section 5. Appeals process

We are in agreement with the concept of an "appeals court" realizing that although it does not directly affect the vocational rehabilitation process, it will provide relief for currently congested court dockets, will relate directly to the legal process relevant to disability appeals, and in general, should speed up the appeals procedure. However, of primary concern to those of us in vocational rehabilitation is the provision that spells out in detail the process whereby a claimant at his/her option can ask for reconsideration in a face-to-face conference with a SSA representative, i.e., disability examiner. This will eliminate the current problem of "paper" decisions rendered only on a review of the case file.

This should add a human quality and more validity to the disability determination process.

As a preface to the remaining sections of H.R. 8076, we wish to comment on several problems of a general nature that relate to those sections.

Historically, the objectives of the Social Security Disability Insurance (SSDI), and Vocational Rehabilitation Programs have been clearly stated in statutes and regulations. Briefly, they are that Social Security funds will be provided for use in rehabilitating disabled beneficiaries to substantial gainful employment (SGA) and, accordingly, removed from the benefit rolls with a resulting savings in the disability insurance trust fund and general revenues.

However, major disincentives to such rehabilitation have gradually become a part of the Social Security Act. The humanistic incentive of restoration of human dignity and fulfillment has gradually been overwhelmed by major economic disincentives inadvertently built into the law and its administration, such as higher and higher benefit levels, health benefits, termination of all benefits even upon demonstrating an ability to work at a level only slightly above SGA, counter productive aspects of the trial work provision and the VR refusal provision, and other obstacles. There may be far greater incentives for the disabled individual to remain "disabled" and dependent than there are incentives to become rehabilitated.

When the Title II Beneficiary Rehabilitation Program (BRP) was begun in 1965, the intent of Congress was clearly stated. That was to provide rehabilitation services to as many beneficiaries as possible; and, at that time the statutes included a number of incentives which would serve as the motivating force to encourage beneficiaries to avail themselves of the opportunities of rehabilitation under this new program. Since that time, administrative interpretations and fragmented pieces of legislation, coupled with substantial changes in our national economic and labor conditions, have changed many of the incentives to disincentives. At this time, we have a law that was intended to help handicapped people move into, or back into, employment but it may have become one that works to keep the handicapped idle.

Benefits provided, especially where family benefits are involved, provide an attractive tax-free alternative to re-employment. Therefore, the employment must produce sufficiently greater income than the benefits in order to offset the added cost of such items as transportation; more costly clothing necessary for work; eating away from home; taxes paid on income earned; and other similar costs.

Such favorable re-employment opportunities for the severely disabled after rehabilitation are limited even in times of full employment. If the benefit level is lower, the incentive for work is proportionately greater unless other sources of income are available in monies or other welfare provisions such as food stamps, rent, subsidies, etc. Then the disincentives are just as great.

For the severely disabled who have chronic disorders, Medicare or Medicaid benefits represent a significant contribution to a beneficiary's income and hence to his sense of economic security and health maintenance. Also, effective private or other health insurance may not generally be available to the severely disabled individual. Potential and active VR clients, faced with the prospect or opportunity for re-employment which would eventually result not only in loss of monthly benefits but loss of health benefits as well, are likely to, and do, weigh the total economic values of the monetary and health benefits before accepting the job placement. This issue becomes most acute and apparent when the employment target will produce wages only slightly higher than the SGA level. Even when the Federal minimum wage (approximately \$4,600 yearly) is applicable to the job opportunity, the combination of total benefit amount and health benefits potential may well exceed the after tax income from work. Such a major disincentive was not envisioned when the original Beneficiary Rehabilitation Program (BRP) was enacted.

Section 6. Earnings level for determining substantial gainful activity

Under the current law, when an individual is able to engage in substantial gainful activity, he or she is not "under a disability" and therefore not entitled to benefits on the basis of disability. That part of the definition of disability which talks of substantial gainful activity (SGA) was designed as a test of severity of impairment. Thus, the impairment by itself is not the crux of severity. Rather, the impairment as it affects, or does not affect, an individual's ability to work is the test of disability. The level of work activity which equates with SGA (or no "disability") was left to regulatory definition. This level has increased over the years and most recently has been placed at \$200 per month. There is belief among those who work in the rehabilitation field that placing SGA at too low a level is a significant disincentive to rehabilitation efforts. Once a rehabilitated beneficiary works to the point of earning at the SGA level or above, and his trial work period has expired, his monthly benefit eligibility ceases and subsequently health benefit eligibility.

We believe that the earnings level of \$250 as a cut off point is adequate and should provide an incentive for a beneficiary to return to work provided he/she is able to retain some guarantee of resumption or retention of certain benefits.

We are especially pleased with your proposal to provide opportunities for the SSA Commissioner to have authority to develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of treating the work activity of disabled beneficiaries under the old-age, survivors, and disability insurance program including such methods as a reduction in benefits based on earnings designed to encourage the return to work of disabled beneficiaries so that savings will accrue to the Trust Fund. We believe this to be a forward looking concept that will provide a basis for making determinations in the future as to the most realistic approaches to encourage recipients to return to work.

Section 7. Period of trial work

Under the current law, the trial work period provision was clearly enacted as an incentive to rehabilitation of the disabled. It was, and still is, intended to provide a nine-month period during which the severely impaired person could test his ability to return to and sustain competitive employment. While it is conceded that generally the intent of the provision has been fulfilled, certain aspects of this provision need refinement or rethinking. For example, as currently administered, any month in which earnings are under \$50 is not counted as a trial work month. This amount is clearly too low in today's earning economy and doesn't represent a true test of work capacity.

Frequently, a beneficiary uses up a significant number of months of a trial work period while making sputtering efforts to work while undergoing rehabilitation. Consequently, when he finally reaches a productive earnings level, the trial work period may be exhausted and he is immediately faced with benefit termination before he has consistently and regularly demonstrated that he can sustain competitive employment. Furthermore, if he continues to work for a

period of time, and subsequently, within five years his impairment worsens or he loses his job, he may not have another trial work period. The uncertainty of the trial work period and when it will end makes it difficult for the counselor and beneficiary to adequately plan and often interferes with rehabilitation efforts. One class of beneficiary, the disabled widow or widower, is not entitled to the trial work period at all. These particular aspects of the trial work period provision adversely affect serious rehabilitation efforts.

It is our impression that a 24-month trial work period will stimulate work incentives. It differs from the current law in that it has a period of complete income exemption for 12 months while during the final 12 months there is benefit suspension but no loss of eligibility. Also, Medicare benefits continue for 24 months after loss of eligibility as long as the individual does not medically recover. This is an excellent provision and can do nothing but enhance the SSA-VR programs.

Section 8. Vocational rehabilitation services for disabled individuals

This section would simplify and provide for better administration of the VR funding sources through consolidation. It also authorizes bonus Federal matching of State regular VR expenditures for those individuals rehabilitated and remaining off the SSA rolls for 12 months. This proposal also provides for bonus matching of workshop client's rehabilitation expenses, and would require that these clients receive wages for a 12-month period after closure. This is a positive change from the existing law which discourages placing Title II beneficiaries in workshops.

We fully support this concept and believe that its potential for enhancing funding will strengthen the state/Federal program; and, it probably is one of the stronger points of H.R. 8076.

Section 9. Continued payment of benefits to individuals under vocational rehabilitation plans

We support this section as written in H.R. 8076. We believe that it too can only strengthen the Beneficiary Rehabilitation Program.

Section 10. Elimination of requirement that months in medicare waiting period be consecutive

This section eliminates the provision in the law that requires an individual who has gone off the SSA Disability rolls to wait another 24 months after he is in benefit status again before he can receive Medicare/Medicaid. This would eliminate one of the greatest disincentives found in the SSA-VR program. Many beneficiaries have on-going medical needs and expenses and cannot afford to participate in a VR program that would jeopardize their Medicare/Medicaid eligibility.

Section 11. Payment for existing medical evidence

Section 12. Payment for certain travel expenses

We believe that these two provisions provide administrative mechanisms for improving accessibility to medical and related data and make it easier for applicants to obtain medical and legal services.

SUMMARY

In summary, this appears to be a very good piece of legislation which should enhance, immeasurably, the intent of both of the Beneficiary Rehabilitation Program and the state vocational programs. We believe that it will eliminate many, if not most, of the disincentives to client participation in vocational rehabilitation activities. We are especially pleased with the prospects of increased and bonus funding which is considered one of the strongest points of the proposed amendments secondary to the most promising result which is the elimination of disincentives to disability recipients returning to work.

Chairman Burke, we are grateful for your continued interest in vocational rehabilitation programs and thank you for the opportunity to appear before this committee.

STATEMENT OF THOROLD S. FUNK

Mr. FUNK. Mr. Chairman, I am joined today by Ms. Lorraine Cronin, who is a member of the CSAVR Committee on Social Security

Relationships and serves as the assistant commissioner for the Massachusetts Rehabilitation Commission, as well as being the administrator of the Disability Determination Service for her State.

Both of us will highlight the key points in our written testimony, which has been submitted to the subcommittee.

Mr. Chairman, the Council is appearing before this subcommittee today to express its views on issues raised by the introduction, by Congressman James A. Burke, of H.R. 8076, a bill to amend certain provisions of title II pertaining to the disability insurance program. Because the Burke bill addresses many of the Council's concerns regarding the program, our comments will be limited to the proposals contained in H.R. 8076.

SECTION 4, DISABILITY DETERMINATIONS UNDER STATE AGREEMENTS

Section 4 of H.R. 8076 provides to the Secretary greater authority and control over the State operations. The effect and apparent intent of this provision is gradual federalization. It would introduce a uniquely different element, the federalized agency, to the present State-Federal partnership.

Rather than increasing uniformity, it would further fragment the decisionmaking process. In a mixed system of State and federally managed disability determination units, it is likely that, as a result of the Federal units receiving special considerations and the increased pressure for uniformity and consistency, most, if not all, States will eventually turn over their disability determination function to the Secretary. If federalization of the entire determination process is the intent of the present bill, then it should be clearly stated as such, with provisions for its implementation.

The Council, while favoring the continuation of the present State-Federal partnership, is adamant in its belief that the program cannot effectively operate with two differing organizational modes existing side by side, one Federal and the other State. It is, therefore, recommended that the Congress either federalize the program as a whole, rather than in the piecemeal fashion set forth in section 4, or else retain the authority and control which States currently have under existing agreements.

The proposed amendments are totally unacceptable to the extent that section 4 creates a mixed system of State and Federal disability determination units which will eventually result in a totally federalized system.

There are other grounds, besides the disruptive effect of "creeping federalization," upon which the Council opposes section 4.

Whether it is the intent of the bill, or not, section 4 does not require the Secretary to enter into any State agreement. If the Secretary permits an agreement to lapse or fails to enter into a new agreement made necessary by changes in the law, there is some concern about whether the State employees of the disability determination unit in such a situation are entitled to the protections set forth in section 4, since the agreement will not have been terminated for the reasons set forth in section (4) (b) (1).

The Council is also concerned about the negative attitude toward the State operation which seems to prevail in the proposed termination

process. Section 4(h) (2) provides that the Secretary may terminate a State agreement if (1) he determines that the State has failed to carry out its agreement, the terms of which are prescribed by the Secretary; or (2) he determines that in some undefined manner the State operation is disadvantageous to efficient administration. There is no problem with the first condition. It is the latter provision, with its "blank check" authority, which causes concern. Under this clause, it is possible for the Secretary to terminate a State operation, despite its having an exemplary performance, because it is "disadvantageous to or inconsistent with efficient administration." The mere existence of a State operation could well be determined by the Secretary to be "disadvantageous to or inconsistent with efficient administration," particularly in a program which has federalized determination units.

Another consideration regarding the effect of the expansive Secretary's power to terminate agreements is that the employees of those State-managed disability determination units which are operating at or near peak efficiency and uniformity will be penalized, while employees of units performing at less than satisfactory standards will be rewarded.

This results from the fact that federalized employees will generally receive higher remuneration than employee in States with approved agreements. Thus, the bill financially rewards employees in those units which have been performing in less than a satisfactory capacity and penalizes employees in State units with optimal performance.

As a sidenote, partial or total federalization of the disability determination process will increase program costs as a result of higher salaries and benefits being paid to individuals who were paid according to State pay scales.

It should be noted that States which do elect to enter into an agreement under this proposal may be penalized financially as a result of the provision regarding actual costs. The provision and the introductory remarks by Congressman Burke make it unclear as to what is meant by "actual costs" and by "indirect costs."

If there is a distinction, it would appear logical to assume that under section 4(a) (4) all costs for the operation of a Federal unit will be "actual costs." On the other hand, for State units, this provision may be applied in a manner not consistent with the cost allocation policy presently being used and monitored by HEW. It is therefore, conceivable that some costs of State operation might not be reimbursed.

Also, with regard to section 4(a) (4), the Council would welcome the Social Security Administration's monitoring of program costs charged to the trust fund as long as there is only one agency performing that function. If this provision is intended to make both HEW and SSA responsible for fiscal monitoring, then the Council opposes section 4(a) (4).

SECTION 8, VOCATIONAL REHABILITATION SERVICES FOR DISABLED INDIVIDUALS

While welcoming this innovative concept of serving disabled beneficiaries, the Council has several areas of concern regarding the interpretation and implementation of section 8.

Under the present disability insurance program, the States are reimbursed 100 percent of the costs of rehabilitation services from the trust fund. One possible interpretation of section 8 is that this provision would require a State to appropriate State funds sufficient to match its Federal allotment at an 80 percent-20 percent matching ratio.

There are States which cannot or will not appropriate the necessary 20 percent State matching funds in order to obtain an 80-percent share of the \$200 million designated for serving disabled beneficiaries.

Thus, disabled beneficiaries in such a State will be penalized in two ways. First, the State will have to expend regular vocational rehabilitation funds to serve these beneficiaries and its other disabled citizens, thereby leaving fewer service dollars for all. Second, a disabled beneficiary will not be receiving all the services which that person paid for as a contributor to the trust fund.

The proposal also reflects a change in the original concept of the program. Funds spent from the trust fund represent individual contributions and do not include money from the public treasury. Under section 8, moneys would now be appropriated from State and Federal treasuries for services provided under an insurance program. What was once a 100 percent privately financed program would become totally funded by the American taxpayer, with the expectation of later reimbursement from the trust fund. By so doing, the prevailing philosophy of the program tends to become more welfare-oriented and less contributions-oriented.

If the \$200 million is to be authorized and appropriated under title I of the Rehabilitation Act of 1973, it is not quite clear from the proposal which HEW agency will have the responsibility for fiscal management. One possible interpretation is that, since the money is appropriated under the Rehabilitation Act, the Rehabilitation Services Administration should monitor the expenditures. However, it is also possible to say that the proposal permits the Social Security Administration to oversee the spending of these funds, since such expenditures will be for the purpose of carrying out the provisions of the Social Security Act. The Council favors location of final responsibility in the RSA.

The Council encourages the committee to clarify these areas of concern. We also applaud the concept of bonus funding, but only to the extent that such payments are truly bonuses and not reimbursements. The present proposal creates a disincentive, because a State will be less likely to attempt the rehabilitation of the high-risk beneficiary in order to be assured that it can be reimbursed for all of its State matching funds.

The Council suggests that there be no matching requirement for the \$200 million. This will retain the bonus incentive for rehabilitation into competitive employment, while avoiding any loss of services to all eligible disabled beneficiaries or the expenditure of public funds.

STATEMENT OF LORRAINE CRONIN

MS. CRONIN. I would like to address myself to two sections of the bill, specifically dealing with the definition of disability and the appeals process.

The Council is of the opinion that the lack of uniformity and consistency in disability determination decisions and the subsequent problems arising in the adjudicative process as a result of those decisions, are primarily attributable to the difficulties in interpreting the present definition of disability.

Recognizing the difficulties in finding an objective and workable definition, the Council at this time has no specific recommendations for what it believes to be a workable definition for the term "disability." Until we have further time to study this issue, our organization opposes any change in the current definition.

The solution proposed in section 3 of the bill, H.R. 8076, is a step in the right direction and merits further consideration, particularly that part of the definition regarding any medically determinable physical or mental impairment. However, that part of the definition which creates a special distinction between beneficiaries, based on arbitrary years of age, is not acceptable.

One alternative being considered by the Council is that the medical standards definition be supplemented with a nonmedical or occupational definition in those instances where the application of a strictly medical standard definition is unduly harsh and restrictive, resulting in the exclusion of individuals who, on an equity basis, should be allowed a disability benefit.

Another alternative would attempt to bring the definition in line with the purpose of the program by tying the definition to payment of benefits. Specifically, this proposal would provide:

1. An occupational definition for those disabled individuals having a specified number of quarters of coverage under the Social Security Act and who do not meet the medical standard definition;

2. The benefit paid under the occupational definition be reduced in a manner proportionate to the number of quarters of coverage; and

3. A full benefit for any individual having a physical or mental impairment or impairments of a level of severity which is deemed under the regulations prescribed by the Secretary to be sufficient to preclude an individual from engaging in any gainful activity.

Now, several positive results would flow from a definition tied to levels of benefit payments. Number one, this would eliminate the need for an arbitrary age distinction; two, provide for a high degree of consistency and uniformity in the decisionmaking process; three, provide a disability benefit directly related to the extent of an individual's participation in the social security system; and four, eliminate many of the disincentives for individuals, particularly the younger worker, to return to work through the rehabilitation process.

In addition, it reaffirms and emphasizes the philosophy that this is a disability insurance and not a welfare program, and that only those individuals with physical or mental impairment which prohibit gainful activity will be entitled to full benefits.

With regard to the distinctions based on age, the Council suggests that this not be used as a primary factor in disability determinations. The mere fact that an individual has reached or exceeded a certain age should not be grounds for providing that person with special or preferential consideration.

In addition, the Council opposes any special provision for any particular disability category, and believes that the disability definition should apply equally to all individuals regardless of the type of disability involved. To permit otherwise would encourage each disability interest group to seek its own special exemption from the law.

The Council does have one specific recommendation regarding the effective date contained in section 3 of the proposed amendment. For purposes of providing equity of treatment, the effective dates should be based on the application date, rather than the determination date. In addition, there is also concern whether an effective date for the reduction of benefits, as proposed in section 3(a)(1)(B) and (C), implies that, after enactment of H.R. 8076, there must be a readjudication for current beneficiaries over 50 years old to assess whether medical considerations alone or an occupational definition apply.

Before I close, I think it should be pointed out that part of the problem with the definition is attributable to the lack of Federal leadership on this matter. The absence of direction and assistance forces each State to rely upon its own guidelines and interpretations of the term. The Social Security Administration seems to be more concerned with gaining control over the process than in cooperating and assisting the States with programmatic concerns and improvements. Additional increases in Federal control are not likely to result in more uniform interpretation or application of the term disability.

The fact that the disability determination function is carried out by the States has no relevancy to the inability to obtain clear, concise, and prompt program instructions from the Social Security Administration. If the States are improperly defining what constitutes an allowable disability, it is due to the lack of Federal assistance and not due to the lack of Federal control.

It is the Council's opinion that the current definition, while not totally without its difficulties, is workable if the proper assistance were available from the Social Security Administration.

In terms of the appeals process, the Council opposes section 5(b)(3) of the bill to the extent that it mandates the Secretary to notify a claimant who is filing an appeal at the reconsideration level of his right to an informal face-to-face conference to discuss the issue involved in the denial of his claim. The bill assumes that a face-to-face interview would add quality to adjudicatory system and would lend itself to greater uniformity and consistency similar to that at the hearing level. The Council recognizes and supports the need for an improved disability determination process. However, we seriously question the wisdom and effectiveness of the proposed methodology of a face-to-face contact for the achievement of that goal.

The face-to-face conference would add subjectivity to a situation which requires an objective application of an objective definition. The proposal would significantly increase case processing time to the detriment of rendering timely and expeditious decisions to the applicant.

Also under this program the program administrative costs would be markedly increased in both personal and nonpersonal services.

On the other hand, the Council does recognize the need for being responsive to individual needs. It recommends, therefore, that the

claimants be given an option of an informal face-to-face conference or an informal conference via the telephone. In addition, it should be optional with the State agency which method, telephone or written notification, would be used to notify the claimant of the conference option.

In addition, it is recommended that time frames for completion of the reconsideration process be changed to "within a reasonable time", which would allow for consistency with provisions in the appeal process.

The Council supports the proposal to discontinue the informal remand procedure.

The Council also endorses the provision of the bill which would establish a disability court to review all social security disability claims. The establishment of precedents by the court will serve to greatly improve the process at the hearing level by providing guidance, assistance, and consistency of interpretation to the administrative law judges and provide a uniform and standardized approach to the adjudicatory process.

Thank you.

[The prepared statement follows:]

STATEMENT OF THE COUNCIL OF STATE ADMINISTRATORS OF VOCATIONAL REHABILITATION

The Council of State Administrators of Vocational Rehabilitation is pleased to have this opportunity to comment on H.R. 8076.

The Council is composed of all the chief administrators of the public vocational rehabilitation agencies for physically and mentally handicapped persons in the States, the District of Columbia, the Trust Territory of the Pacific Islands, Guam, Puerto Rico, and the Virgin Islands. Founded in 1940 to furnish state input into the State-Federal vocational rehabilitation program, the Council has, since then, served as a quasi-official advisor to its Federal partner, the Rehabilitation Services Administration, and has provided a forum for State administrators to study, deliberate, and act upon matters bearing upon the successful rehabilitation of handicapped persons.

Through its Committee on Social Security Relationships, the Council interacts with the Social Security Administration and the appropriate committees of the Congress regarding the disability determination and rehabilitation aspects of the social security program. In addition to State Directors of Vocational Rehabilitation, this CSAVR standing committee is composed of a Disability Determination Administrator from each of the ten Federal regions. It is on behalf of the Council that several members of this Committee have testified before the Subcommittee on Social Security of the House Ways and Means Committee. The last two appearances, regarding Trust Fund and SSI program disincentives, were June 4, 1976, and June 13, 1975.

Mr. Chairman, the Council is appearing before this subcommittee today to express its views on issues raised by the introduction, by Congressman James A. Burke, of H.R. 8076, a bill to amend certain provisions of title II pertaining to the disability insurance program. Because the "Burke bill" addresses many of the Council's concerns regarding the program, our comments will be limited to the proposals contained in H.R. 8076.

Before commenting on the specific provisions of H.R. 8076, the Council calls attention to the close relationship which exists between the disability insurance program under title II and the Supplemental Security Income (SSI) program under title XVI of the Social Security Act. Due to the similarities between these two programs, the Council recommends that the possible impact of these proposed amendments on the title XVI program be identified and that, where necessary, appropriate references to title XVI be incorporated into H.R. 8076.

SECTION 2: FINANCING OF DISABILITY INSURANCE TRUST FUND

The Council has no specific reservation with regard to section 2 of H.R. 8076 as an interim and short-term solution to the problem of title II program funding. However, we do hope that as a result of this series of hearings, the Ways and Means Committee will be able to recommend to the Congress, for immediate enactment, comprehensive, long-term and innovative legislation on the fiscal management of the Trust Fund program.

SECTION 3: DEFINITION OF DISABILITY

The Council is of the opinion that the lack of uniformity and consistency in disability determination decisions and the subsequent problems arising in the adjudicative process as a result of those decisions are primarily attributable to the difficulties in interpreting the present definition of "disability."

Recognizing the difficulties in finding an objective and workable definition, the Council, at this time, has no specific recommendations for what it believes to be a workable definition for the term "disability." Until we have had further time to study this issue, our organization opposes any change in the current definition. The solution proposed in section 3 of H.R. 8076 is a step in the right direction and merits further consideration, particularly that part of the definition regarding "any medically determinable physical or mental impairment." However, that part of the definition which creates a special distinction between beneficiaries, based on arbitrary years of age, is not acceptable.

One alternative being considered by the Council is that the medical standards definition be supplemented with a non-medical or occupational definition in those instances where the application of a strictly medical standards definition is unduly harsh and restrictive, resulting in the exclusion of individuals who, on an equity basis, should be allowed disability benefits.

Another alternative would attempt to bring the definition in line with the purposes of the program by tying the disability definition to payment of benefits. Specifically, this proposal would provide: (1) An occupational definition for those disabled individuals having a specified number of quarters of coverage under the Social Security Act and who do not meet the medical standards definition; (2) that the benefit paid under the occupational definition be reduced in a manner proportionate to the number of quarters of coverage; and (3) a full benefit for any individual having a physical or mental impairment, or impairments, of a level of severity which is deemed, under the regulations prescribed by the Secretary, to be sufficient to preclude an individual from engaging in any gainful activity.

Several positive results would flow from a definition tied to levels of benefit payments. This proposal would: (1) Eliminate the need for an arbitrary age distinction; (2) provide for a high degree of consistency and uniformity in the decisionmaking process; (3) provide a disability benefit directly related to the extent of the individual's participation in the social security system; and (4) eliminate many of the disincentives for individuals, particularly the younger worker, to return to work through the rehabilitation process. In addition, it reaffirms and emphasizes the philosophy that this is a disability insurance (and not a welfare) program and that only those individuals with physical or mental impairments which prohibit gainful activity will be entitled to full benefits.

Another concept which could be coupled with the above proposal, or else used alone, is that of partial disability. In essence, a partial disability concept would function in a manner similar to the occupational test, but by taking a different approach through an emphasis on the nature and extent of an impairment and its relationship to nonmedical factors.

With regard to distinctions based on age, the Council suggests that this not be used as a primary factor in disability determinations. The mere fact that an individual has reached or exceeded a certain age should not be grounds for providing that person with special or preferential consideration or treatment.

In addition, the Council opposes any special provision for any particular disability category and believes that the disability definition should apply equally to all individuals, regardless of the type of disability involved. To permit otherwise encourages each disability interest group to seek its own special exception from the law.

The Council does have one specific recommendation regarding the effectiveness of section 3 of the proposed amendments. For purposes of providing equity of

treatment, the effective dates should be based on the application date, rather than the determination date, as set forth in section 3(e). If the determination date is used, then it is quite possible that individuals applying for benefits on the same date prior to enactment could receive different benefits after enactment of these changes; because one is allowed under the current definition and the other is allowed under this proposal. In addition, there is also concern whether an effective date for the reduction of benefits, as proposed in sections 3(a)(1)(B) and (C), implies that, after enactment of H.R. 8076, there must be a readjudication for current beneficiaries over 50 years old to assess whether medical considerations alone or an occupational definition apply.

Concerning section 3(a)(1)(A), the Council suggests that this provision be amended by deleting any reference to "gainful activity" and merely requiring an individual to "meet or equal the medical listings prescribed by the Secretary." This change would clarify the intent of that clause and remove surplus words.

Before closing comment on this section of the bill, it should be pointed out that part of the problem with the definition is attributable to the lack of Federal leadership on this matter. The absence of direction and assistance forces each State to rely upon its own guidelines and interpretations of the term. The Social Security Administration seems to be more concerned with gaining control over the process than in cooperating and assisting the states with programmatic concerns and improvements. Additional increases in Federal control are not likely to result in more uniform interpretation or application of the term "disability."

The fact that the disability determination function is carried out by the states has no relevancy to the inability to obtain clear, concise, and prompt program instructions from the Social Security Administration. If the States are improperly defining what constitutes an allowable disability, it is due to the lack of Federal assistance, and not to the lack of Federal control. It is the Council's opinion that the current definition, while not totally without its difficulties, is workable if the proper assistance were available from the Social Security Administration.

SECTION 4: DISABILITY DETERMINATION UNDER STATE AGREEMENTS

Section 4 of H.R. 8076 provides to the Secretary greater authority and control over the State operations. The effect and apparent intent of this provision is gradual federalization. It would introduce a uniquely different element, the federalized agency, to the present State-Federal partnership. Rather than increasing uniformity, it would further fragment the decisionmaking process. In a mixed system of State and federally managed disability determination units, it is likely that, as a result of the Federal unit's receiving special considerations and the increased pressure for uniformity and consistency, most, if not all, states will eventually turn over their disability determination function to the Secretary. If federalization of the entire determination process is the intent of the present bill, then it should be clearly stated as such, with provisions for its implementation.

The Council, while favoring the continuation of the present State-Federal partnership, is adamant in its belief that the program cannot effectively operate with two differing organizational modes existing side-by-side, one Federal and the other State. It is, therefore, recommended that the Congress either federalize the program as a whole, rather than in the piecemeal fashion set forth in section 4, or else retain the authority and control which States currently have under existing agreements. The proposed amendments are totally unacceptable to the extent that section 4 creates a mixed system of state and Federal disability determination units which will eventually result in a totally federalized system.

There are other grounds, besides the disruptive effect of "creeping federalization," upon which the Council opposes section 4. Whether it is the intent of the bill, or not, section 4 does not require the Secretary to enter into any state agreement. If the Secretary does permit an agreement to lapse or fails to enter into a new agreement made necessary by changes in the law, there is some concern about whether the State employees of the disability determination unit in such a situation are entitled to the protections set forth in section 4, since the agreement will not have been terminated for the reasons set forth in section 4(b)(1).

The Council is also concerned about the negative attitude toward the State operation which seems to prevail in the proposed termination process. Section 4(h)(2) provides that the Secretary may terminate a State agreement if: (1) He determines that the State has failed to carry out its agreement (the terms of

which are prescribed by the Secretary); or (2) he determines that in some undefined manner the State operation is disadvantageous to efficient administration. There is no problem with the first condition. It is the latter provision, with its "blank check" authority, which causes concern. Under this clause, it is possible for the Secretary to terminate a State operation, despite its having an exemplary performance, because it is "disadvantageous to or inconsistent with efficient administration." The mere existence of a state operation could well be determined by the Secretary to be "disadvantageous to or inconsistent with efficient administration," particularly in a program which has federalized determination units.

Another consideration regarding the effect of the expansive Secretary's power to terminate agreements is that the employees of those State-managed disability determination units which are operating at or near peak efficiency and uniformity will be penalized, while employees of units performing at less than satisfactory standards will be rewarded. This results from the fact that federalized employees will generally receive higher remuneration than employees in states with "approved" agreements. Thus, the bill financially rewards employees in those units which have been performing in less than a satisfactory capacity and penalizes employees in state units with optimal performance.

As a side note, partial or total federalization of the disability determination process will increase program costs as a result of higher salaries and benefits being paid to individuals who were paid according to State pay scales.

It should be noted that States which do elect to enter into an agreement under this proposal may be penalized financially as a result of the provision regarding "actual costs." The provision and the remarks by Congressman Burke make it unclear as to what is meant by "actual costs" and by "indirect costs." If there is a distinction, it would appear logical to assume that under section 4(a)(4) all costs for the operation of a Federal unit will be "actual costs." On the other hand, for state units, this provision may be applied in a manner not consistent with the cost allocation policy presently being used and monitored by HEW. It is, therefore, conceivable that some costs of state operation might not be reimbursed.

Also, with regard to section 4(a)(4), the Council would welcome the Social Security Administration's monitoring of program costs charged to the trust fund as long as there is only one agency performing that function. If this provision is intended to make both HEW and SSA responsible for fiscal monitoring, then the Council opposes section 4(a)(4).

The Council agrees with the protection provided state employees in section 4 in the event that federalization should occur. However, we do have a minor concern regarding the scope of coverage of this protection. Specifically, the concern involves the definition of the phrase, "permanently employed by a State." Who is considered a permanent state employee will vary according to state law. There are individuals who are fully employed by the state disability determination unit, but who are not considered to be permanent state employees. We urge the committee to carefully consider what steps, if any, are necessary to protect these individuals.

SECTION 5: APPEALS PROCESS

The Council opposes section 5(b)(2) of H.R. 8976 to the extent that it mandates the Secretary to notify a claimant who has filed an appeal at the reconsideration level of his right to an informal face-to-face conference to discuss the issues involved in the denial of his claim. The bill assumes that a face-to-face interview would add quality to the adjudicatory system and would lend itself to greater uniformity and consistency similar to that at the hearing level. The Council recognizes and supports the need for an improved disability determination process. However, we seriously question the wisdom and effectiveness of the proposed methodology of a face-to-face contact for the achievement of this goal.

The face-to-face conference would add subjectivity to a situation which requires an objective application of an objective definition. The proposal would significantly increase case processing time to the detriment of rendering timely and expeditious decisions to the applicant. Under this proposal, program administration costs would be markedly increased in both personal and nonpersonal services.

On the other hand, the Council recognizes the need for being responsive to individual needs and situations. It recommends that the claimant be offered, therefore, the option of an informal face-to-face conference or an informal con-

ference via the telephone. In addition, it should be optional with the State agency which method, telephone or written notification, would be used to notify the claimant of the conference option.

In addition, it is recommended that time frames for completion of the reconsideration process be changed to "within a reasonable time," which would allow for consistency with provisions in the appellate process.

The Council supports the proposal to discontinue the informal remand procedure.

The Council endorses the provision in the bill which would establish a disability court to review all social security disability claims under the SSDI and SSI programs. The establishment of precedents by the court will serve to greatly improve the process at the hearings level by providing guidance, assistance, and consistency of interpretation to the administrative law judges and provide a uniform and standardized approach to the adjudicatory process.

SECTION 6: EARNINGS LEVEL FOR DETERMINING SUBSTANTIAL GAINFUL ACTIVITY

The Council endorses the provision of H.R. 8076 which raises the earnings level for substantial gainful activity. This would provide the beneficiary with greater incentive to return to employment. We also support the proposal that the level of substantial gainful activity may be changed by regulation. This will permit the level to be more responsive to economic conditions.

SECTION 7: PERIOD OF TRIAL WORK

Our organization supports the extension of the trial work period to 24 months in those situations where the disability does not cease, and the suspension of benefits after 12 months if the level of substantial gainful activity is met or exceeded. We urge the committee to provide a similar trial work period to SSI beneficiaries in order to encourage these individuals to return to employment.

SECTION 8: VOCATIONAL REHABILITATION SERVICES FOR DISABLED INDIVIDUALS

While welcoming this innovative concept of serving disabled beneficiaries, the Council has several areas of concern regarding the interpretation and implementation of section 8.

Under the present disability insurance program, the States are reimbursed 100 percent of the costs of rehabilitation services from the trust fund. One possible interpretation of section 8 is that this provision would require a State to appropriate State funds sufficient to match its Federal allotment at an 80 percent to 20 percent matching ratio. There are States which cannot or will not appropriate the necessary 20 percent State matching funds in order to obtain an 80 percent share of the \$200 million designated for serving disabled beneficiaries. Thus, disabled beneficiaries in such a State will be penalized in two ways. First, the State will have to expend regular vocational rehabilitation funds to serve these beneficiaries and its other disabled citizens, thereby leaving fewer service dollars for all. Second, a disabled beneficiary will not be receiving all the services which that person paid for as a contributor to the trust fund.

The proposal also reflects a change in the original concept of the program. Funds spent from the trust fund represent individual contributions and do not include money from the public treasure. Under section 8, monies would now be appropriated from State and Federal treasuries for services provided under an insurance program. What was once a 100 percent privately financed program would become totally funded by the American taxpayer, with the expectation of later reimbursement from the trust fund. By so doing, the prevailing philosophy of the program tends to become more welfare-oriented and less contributions-oriented.

If the \$200 million is to be authorized and appropriated under title I of the Rehabilitation Act of 1973, it is not quite clear from the proposal which HEW agency will have responsibility for fiscal management. One possible interpretation is that, since the money is appropriated under the Rehabilitation Act, the Rehabilitation Services Administration should monitor the expenditures. However, it is also possible to say the proposal permits the Social Security Administration to oversee the spending of these funds, since such expenditures will be for the purpose of carrying out the provisions of the Social Security Act. The Council favors location of that responsibility in RSA.

The Council encourages the committee to clarify these areas of concern. We also applaud the concept of bonus funding, but only to the extent that such payments are truly bonuses and not reimbursements. The present proposal creates a disincentive, because a State will be less likely to attempt the rehabilitation of the high risk beneficiary in order to be assured that it can be reimbursed for all of its State matching funds. The Council suggests that there be no matching requirement for the \$200 million. This will retain the bonus incentive for rehabilitation into competitive employment, while avoiding any loss of services to all eligible disabled beneficiaries or the expenditure of public funds.

SECTION 9: CONTINUED PAYMENT OF BENEFITS TO INDIVIDUALS UNDER VOCATIONAL REHABILITATION PLANS

The Council strongly endorses the proposal to continue benefit payments to beneficiaries under a vocational rehabilitation plan. There are two questions which arise from this proposal. When does this provision apply? At case closure, or when the individual returns to work? Also, when are the benefits actually terminated? Guidance on these two points is needed.

SECTION 10: ELIMINATION OF REQUIREMENTS THAT MONTHS IN MEDICARE WAITING PERIOD BE CONSECUTIVE

The continuance of medicare coverage for 24 months in the absence of medical recovery represents a significant improvement over the existing system and will eliminate another disincentive to rehabilitation and the return to employment. The Council strongly supports this provision, as it has in previous testimony submitted to this committee.

SECTION 11: PAYMENT FOR EXISTING MEDICAL EVIDENCE

We support this proposal, which authorizes the payment for existing medical evidence. It is hoped that similar changes will be made in this regard in the title XVI program.

SECTION 12: PAYMENT FOR CERTAIN TRAVEL EXPENSES

The Council endorses the proposal to pay travel expenses incurred by the claimant at the request of the Secretary.

SECTION 13: GENERAL EFFECTIVE DATE

The Council recommends that these amendments take effect ninety (90) days after enactment, except where otherwise specified in the act. This will provide the State and Federal Government some lead time in making preparations for implementation.

Mr. PICKLE. Thank you, Ms. Cronin.

The Chair personally wants to observe that you have given some very valuable information. Your group deals daily with a subject that some of us on the committee are trying to get educated about.

You have had practical experience, and what you say will have much weight with this member because we need to know more about the program.

Let me ask you, first, is it the testimony of your group that you are in support or are in general support of H.R. 8076?

Now you have given comments on the various sections with some difference of opinion, but overall are you in favor of the measure that has been proposed?

Mr. HANSEN. Mr. Chairman, we are here representing two separate organizations, and on certain points there may be issues of difference.

The National Rehabilitation Association basically supports H.R. 8076.

Mr. PICKLE. At the beginning of your statement, Mr. Hansen, I had the idea that you were more or less recommending the status quo be maintained and that if we did anything at all we ought to federalize rather than to go the route favored by Congressman Burke, giving the Secretary the power to terminate the State agreements in cases of unsatisfactory performance.

Is that an accurate appraisal, that you would prefer the status quo?

Mr. HANSEN. I would like to respond to the question of federalization versus maintaining it as a State program at this point, a cooperative program.

Our testimony has been that we would much prefer that it remain as a State function as long as that State can perform the duties and obligations.

Mr. PICKLE. If you maintain it as a State agency, do we then put in a system where the Federal Government is not able to set standards of performance?

Mr. HANSEN. No, sir. I would like to have Mr. Urton respond to that.

Mr. URTON. No, sir. I do not think that this would be in order, Mr. Chairman.

I think that is a responsibility of the Federal agency to develop these kinds of performance to give the guidelines and leadership in terms that are understandable and can be implemented at the State level.

I, too, prefer that the situation as it is now would remain that way so long as States can carry out their functions.

Mr. PICKLE. Do we have any States where State agreements have been terminated because of substandard performance?

Mr. URTON. I am not aware of any, sir.

Mr. PICKLE. Instinctively, I would like to adopt the same suggestion that you gentlemen recommended, not so much to maintain the status quo, but to keep the States in control of the basic operations you have.

Yet, we have a problem in the disability field, in administration, appeals, definition, and payment.

The committee must look at all aspects of it to see if we have got the right kind of system and if we need to make some changes.

The Federal Government basically has said that a lot of times they have substandard performance by State agencies and they continue it because they have no alternative to change it; is that correct?

Mr. FUNK. Mr. Chairman, they have ample security and guidelines by which they can make changes at any time.

We have asked SSA persistently to identify any State which is not performing adequately or which is not meeting program standards. SSA has failed to identify for the Council any State which is not measuring up to program standards. What we are saying is why make a blanket indictment by saying that some States or one State does not perform up to the level expected.

We are saying to SSA that there is authority in the present agreement right now, which permits the Secretary to terminate a State agreement for failure to perform, and which is adequate to protect them.

We believe that the States can do an excellent job. They can save money for the Government. The council has failed to see, as Ms. Cronin

stated, the Federal leadership, guidelines, and improvements in the system which the States have continually requested.

Mr. PICKLE. The fact that no State has been terminated, I presume, could be interpreted any way you want to look at it, one, that they are doing a good job or, second, that the Federal Government does not have enough authority to cancel that agreement.

You can weigh those two views in mind, and we just go along as usual, don't we?

I am not satisfied that is not the best course, but I think we have got to make some of these changes. I suppose the first thing we have got to do is arrive at a proper definition of what is a disability.

It is not so much about whether it is dated from the date of application or the termination date, but what is the definition.

Now, Mr. Burke, as I understand it, has offered a different definition under his measure of a disability than we have had before.

Do you as a panel disagree with his definition of disability?

Ms. CRONIN. We would like to study this further. Right now, we are supporting the present definition. Any distinction based on age does not go along with the philosophy of the program. It is mandatory that the Social Security Administration promulgate rules, regulations, and policies to the State agencies which make the interpretation of the definition of disability workable. This has not happened. We have not received this kind of guidance from the Social Security Administration. Therefore, the definition is subject to varied interpretation by the States. I think this is where you see error rates. I think that the proper assistance from SSA is mandatory before we can begin talking about changing the definition of disability.

Mr. PICKLE. There was a definition in the bill of Congressman Levitas, who preceded us: are you familiar with that?

Ms. CRONIN. I am just familiar with it. I have not had time to digest it and analyze it.

Mr. PICKLE. Are any of you familiar with it?

Mr. HANSEN. No, sir.

Mr. FUNK. No, sir.

Mr. PICKLE. Just to get it on the record, I am going to ask the staff to give us a summary of the difference between those two opinions and get some reaction of you as panelists.

Mr. AMES. Under the Burke bill, basically the medical factors alone will justify determination of a disability if a person is under age 50, and an occupational definition for those over age 50 on the reduced basis, the same basis as disabled widows and widowers.

There would also be an allowance for people that need the medical factors.

The Levitas bill requires a determination of alternatives of either an indefinite duration that the disability will last that long on a determination that it will last for a specific length of time and that there is a feasibility of rehabilitation.

That is oversimplification. Both the bills have a 100-percent review requirement and 100 percent in Burke for the medical factors.

Mr. PICKLE. Does the panel have any comment about the two approaches or do you have a definition of your own?

Mr. FUNK. We may, Mr. Chairman. I think we would like to present to your staff and to you a statement of our position with respect to that.

[The following was subsequently received for the record:]

SUPPLEMENTAL STATEMENT OF THE COUNCIL OF STATE ADMINISTRATORS OF
VOCATIONAL REHABILITATION REGARDING THE DISABILITY DEFINITION

In its testimony before the House Subcommittee on Social Security on July 22, 1977, as well as in submissions to the subcommittee over the past 2 years, the Council of State Administrators of Vocational Rehabilitation has taken the position that the major problem in the establishment of uniformity and consistency in the disability determination process pertains to the need for more precision in the application of the current definition. The Council is of the opinion that the current definition is adequate to achieve the desired uniformity, provided that more precise regulations clearly reflecting program standards and goals are promulgated. In particular, this would apply to the application of non-medical factors which have been a part of the SSDI program.

The major problem with the definition proposed in H.R. 8076 is that it excludes from consideration for disability benefits those individuals in a particular age bracket, i.e., under 50 years of age, and automatically says that these individuals can work when, in fact, a number of them cannot, although they do not meet or equal the medical listings. If it is important to try a new definition, the Council would accept the occupational definition for those over the age of 50 years, as proposed in section 3 of H.R. 8076, but would like to see some provision made for the under 50 years of age group, taking into consideration those who have transferable skills and those who have no work history.

It is assumed that any new definition of disability would apply to both title II and title XVI of the Social Security Act. The Council strongly urges that every effort be made to insure that any change in the definition in title II be reflected in a corresponding change in title XVI.

In supporting the current definition of disability and noting that a major problem is in the application of that definition, and not with the definition itself, the Council believes that significant improvements could result in the disability determination process if the Congress mandates that regulations be promulgated in certain specific areas which currently cause problems. These areas include, but may not be limited to, such factors as:

(1) A precise definition of the term "slight impairment" of, in lieu thereof, the elimination of the concept; and

(2) Vocational standards which would be applied on an individual basis and cover such items as: (a) criteria for denoting remaining functional capacity; (b) illiteracy, including consideration of the inability to communicate in English; and (c) nonexertional impairments.

In conclusion, significant improvements in uniformity and consistency in the disability determination process can be achieved without a change in the present definition if the states are provided with precise and meaningful regulations which can be applied on an individual basis and which avoid providing special privileges to a particular age or disability group. It is the Council's opinion that the proposed definition contained in section 3 of H.R. 8076 will not result in significant improvements, unless implemented by precisely defined regulations. The Council feels strongly that any definition will lack decisiveness, if administered at the Federal level with varying or constantly changing interpretations. Implementing regulations must be promulgated with the intent of improving the system of disability determinations rather than having the effect of disrupting the State-Federal partnership and developing a climate for further Federal control. If regulations are drafted with this goal in mind, then many, but not all, of the problems associated with the definition could be eliminated.

Mr. PICKLE. Mr. Hansen, are you a doctor?

Mr. HANSEN. Yes, sir. It is not a medical degree, though.

Mr. PICKLE. I understand.

Dr. Hansen, you have talked about your definition of disability.

Do you have a different feel from what we have comments on?

Mr. HANSEN. Our organization would like a period of time to review both the Burke and Levitas definitions, and submit in written form a position on that.

[The following was subsequently received for the record:]

After a review of the definition of disability found in the Burke and Levitas bills, we feel the written comments submitted to you by the Council of State Administrators of Vocational Rehabilitation best summarizes our position on this issue.

Mr. PICKLE. The panel has also suggested that the General Accounting Office has stated that part of the problem in disability is a lack of Federal leadership.

Recently the Social Security Administration, in answer to the GAO, has attempted now to give leadership in this area.

A model for State disability units and for uniform work has been established.

We commented on that earlier, a part of that question. Do you think this is a way to exert more Federal leadership?

Ms. CRONIN. The GAO, Mr. Chairman, pointed out that there are variations in the organizations of different States, but I do not believe that they pointed out or had time to analyze whether or not these variations among the States contributed to the lack of uniformity in the decisionmaking process. Second, the way the model State agreement is worded would provide for more Federal control over a State agency. I believe that the management of a disability program, and I use the word "management," not of a process, but of the people to get the job done, should remain with the States.

Now, it behooves the Social Security Administration to provide standards and guidelines. I have no difficulty with their providing national performance goals which are and have to be measurable and attainable. However, you cannot have two organizations managing one function. I think what the Social Security Administration purports to do is to offer a mechanical solution to a very difficult problem and, by so doing, they are missing the core issue of quality in decisionmaking.

There is no way in which you could have one identical model which would assure you that you would achieve your goal of timely and expeditious decisionmaking. The Social Security Administration's model is strictly a mechanical approach to the problem.

Mr. PICKLE. I commented at the beginning of the session this morning that one consideration advanced is to have additional administrative law judges, and, in effect, have adversary proceedings on a person-to-person basis at the beginning point.

Is that a good recommendation?

Is that a practical thing?

Ms. CRONIN. At the beginning point of what?

Mr. PICKLE. For the determination of a disability in the entire case?

Ms. CRONIN. I am not prepared to comment on that because—I hear you but I am not too sure that I understand what you are saying.

My gut reaction would be no.

Mr. PICKLE. You would keep the status quo regarding the procedure and you would oppose the face-to-face procedure?

Mr. HANSEN. I would like to respond to that.

If we are talking about a face-to-face procedure on the initial determination, I think you are going to have a horrendous task of having individuals in talking with the disability examiner, you are going to bog the whole process down.

Now, as we stated earlier, as it gets to a reconsideration process and if the individual citizen wishes to exercise his option of having a face-to-face discussion with the person that has denied him disability insurance benefits, I think that is a legitimate and reasonable thing.

If we get to the administrative law judge level, on which I have made a number of appearances as a vocational witness, then you begin to introduce the adversary role where the person is represented by legal counsel.

I think the process would be severely bogged down if you introduce legal counsel on the initial consideration phase.

Mr. PICKLE. But you would agree that you could have face-to-face or adversary proceedings at the reconsideration point?

Mr. HANSEN. I would agree to that as an option, if the citizen wished to exercise that option, yes.

Mr. PICKLE. Can you tell me why we have had such a large payout of benefits on the disability programs?

I commented earlier that it was some \$10 to \$12 billion last year. The committee anticipated that it would be less than half this amount now, but it has more than doubled, and the trend is on the increase.

Why is that?

Mr. URTON. I would like to respond.

I don't know that I will answer your question just the way you have stated it.

We have heard this morning many mention motivation incentives for rehabilitation of disabled beneficiaries. I have been in a position at the grassroots level of working with counselors who are trying to work with these severely disabled handicapped people.

Rehabilitation is a real hard task for many of them. They go through laborious processes of trying to strengthen muscles so they can get in and out of wheelchairs—this is an oversimplification, but it is a very difficult thing. It takes a long time for a severely handicapped person to get to a place where he can go into a job situation.

All of the motivational factors, the psychological impact of disability and all of these, he is trying to overcome.

I think that one of the greatest disincentives or unmotivational factors is the benefit structure, and this coupled with a medical benefit that people have is just almost making it, to be blunt with you, making it impossible for counselors to cope with as they try to get these people into the kinds of jobs that they can do better from an economic financial standpoint than they can receive benefits.

We work with them pretty closely and they do pretty well in many instances until it is about time for their benefits to be ceased, and then they can no longer function.

What I am saying is that we have a responsibility, the rehabilitation has a responsibility to remove them from the rolls, and I don't think we have been able to do this because of so many disincentives.

Mr. PICKLE. I think it is the committee's feeling that we must improve the definition.

We hear constantly of instances where Federal employees are receiving disability and are still working.

Certainly this is not an exclusive military practice, but I have read of many cases of high ranking officers previously with spotless health

records, who have developed sudden illnesses in the last year before required retirement. As a result, they have been able to retire on a tax-free disability which is nearly the same as their highest salary.

Some cases, they gain 100-percent disability. We have to question whether they really are disabled.

It may be that type of thing is one of the big reasons why there is such a drain on disability. Would you agree?

Ms. CRONIN. Yes, sir.

Mr. FUNK. Yes, sir.

Mr. HANSEN. Yes, sir.

Mr. FUNK. We absolutely agree.

Mr. PICKLE. I have one other question.

I don't want to assume anything from your testimony, but I take it you disapprove of the special provisions in the law for the blind and there are many bills before us that would make further liberalization for those who are blind.

Do you disapprove of the special provisions the law provides?

Mr. FUNK. Mr. Chairman, we feel to single out a specific disability or disability group is patently unfair to the broad range of disabilities that other people suffer from, and that those benefits and those privileges which are based on a disability should be shared by all. If you mandate special consideration to one group, then you start setting up and encouraging special groups to come back for additional special privileges from this congressional body. We think that if a system is fair, then it should be fair to all, sir.

Mr. PICKLE. I assume the panel agrees?

Mr. HANSEN. We concur.

Mr. PICKLE. I will thank the panelists.

I would like to talk to you further about all of these various sections.

I think you have given us helpful information. You have not taken a strong position for or against but you have made comments on the various aspects of the bill.

This would be helpful to the committee.

I particularly am glad to have you here because you are the ones who are working in this area and, you know, you see it first hand and the testimony has special meaning for us.

We thank you very much for coming and being with us today.

[The following was submitted for the record:]

STATEMENT OF THE ADMINISTRATIVE AND SUPERVISORY PRACTICES DIVISION,
NATIONAL REHABILITATION ASSOCIATION, STANLEY J. SMITS, PRESIDENT

My name is Stanley J. Smits. This statement is being made on behalf of the Administrative and Supervisory Practices Division of the National Rehabilitation Association. It is an independent statement, and therefore not necessarily the position of the National Rehabilitation Association or any of its other Divisions.

The State-Federal program of Vocational Rehabilitation and the Disability Insurance Benefits Program of the Social Security Administration have overlapping concerns and responsibilities for the well-being of the disabled citizens of this country. They share a common emphasis in the vocational area, with work either as the pre-requisite for benefits or as the goal of services. It is our contention that the need exists for a strong vocational rehabilitation component within any meaningful legislation involving disability insurance beneficiaries from the Social Security program. In our opinion, H.R. 5064 makes this provision.

Vocational rehabilitation has served a number of key roles during its 57-year history. It provided a substantial number of workers during World War II when manpower shortages were interfering with the industrial output needed for the war effort. It has made a substantial contribution to society during the last twenty years by changing unemployed disabled Americans into productive members of our society who contribute tax dollars rather than receive them. But its principal objective, or mission, has been to enable disabled Americans to think, feel, and behave like Americans. This country was built on a work ethic. Personal satisfaction is still closely linked to work. For the disabled in this country to feel as though they belong to our society, and to view themselves as worthwhile, they must be given the opportunity to be fully productive members of this society.

The program to provide benefits to disabled workers was designed to meet their needs for security, not to rob them of their human dignity and their rights of citizenship. Yet it can do just that! A man concerned about the security of his family, distraught by his decreased ability to function, can become dependent upon the benefits he receives.

His need for security can supersede his needs for belongingness and self-esteem. Is it fair to setup a system that causes this type of psychological stress? We think not! Is it necessary? No. H.R. 5064 provides for the disabled worker's security, without the disincentive of long-range dependency on benefits, and with a system designed to facilitate his return to productive employment.

The Congress in its wisdom has already mandated priority services for the severely disabled as a part of the Rehabilitation Act of 1973 (PL 93-112), as amended. This legislation was based upon the observed needs of the severely disabled and upon the capacity of the state-federal program of vocational rehabilitation to meet them. Was the Congress addressing the problems of only those severely disabled persons who have not worked long enough to have earned the necessary quarters of coverage to qualify for disability insurance benefits? We doubt it. Does the Congress intend to mandate priority services for one group of severely disabled citizens while at the same time providing disincentives for another group to participate in the same program of service? We hope not.

If the arguments presented so far have been persuasive, the questions of importance then become: (1) Does vocational rehabilitation have the expertise to implement H.R. 5064? (2) Would it be cost-effective?, and (3) What system problems would be encountered?

Since 1954, rehabilitation has invested heavily in research and demonstration projects, and in inservice and degree-oriented training programs. One of the results has been the emergence of a new professional group with expertise in vocational evaluation. This expertise, if utilized more fully in the determination of disability, would enable the disability examiners to make the necessary diagnostic determinations to implement H.R. 5064. This expertise, if utilized more fully by the rehabilitation counselor, would enable him to develop a plan of treatment with the accurate time estimates needed to implement H.R. 5064. It is my understanding that testimony will be furnished by the Vocational Evaluation and Work Adjustment Association regarding the specifics of this expertise. I will comment later on what should be done to guarantee its utilization.

Vocational rehabilitation is cost-effective. I am furnishing excerpts from a report which will be published in the Summer, 1977 issue of the "Journal of Rehabilitation Administration" which help substantiate this statement. The benefit/cost model contains the elements shown in Table 1. The 36 data elements used in the calculations are shown in Table 2. Lifetime and two-year benefits are summarized in table 4. While this report is limited to one state, it is typical of the country as a whole. A favorable benefit/cost ratio for the severely disabled emerges at two-years (1.2:1) with a projected lifetime benefit of 14:1.

Several system deficiencies would need to be overcome before H.R. 5064 could be implemented fully: (1) Expertise in specific elements of vocational evaluation would need to be transmitted to disability examiners and rehabilitation counselors to insure an accurate diagnosis of rehabilitation potential, the timely development of a plan of services, and the provision of the services including job placement; (2) Policies and procedures would need to be developed to insure the smooth functioning of the program; and (3) Scarce manpower and fiscal resources would need to be allocated or reallocated, to implement the program.

My association stands ready to assist in these tasks. We recommend a three-phased system of implementation should the legislation be enacted: First, we recommend a phase involving pilot testing to determine the steps involved in preparing staff and operationalizing the program. This could be accomplished through research and demonstration projects in six states for a period of one year. Careful data collection regarding the time, staff, and fiscal costs of starting-up would be an essential component of this phase. Second, we recommend a phase in which an additional group of states begin implementing the program while the original group begins to collect benefit/cost data. Assuming that favorable benefit/cost data were produced by the Phase I projects, and assuming that the costs of starting-up had been adequately minimized for the Phase II projects, we would then recommend full national implementation.

Thank you for the opportunity to present our concerns and recommendations regarding the rehabilitation components of H.R. 5064.

Respectfully submitted.

TABLE 1.—PERSPECTIVES FOR COMPARING BENEFITS AND COSTS OF REHABILITATION PROGRAMS

Analytical perspective	Benefits							Costs							
	Increased earnings of individuals	Increased earnings of household members	Increased taxes	Decrease in economic dependence	Increased productivity	Reduced social costs of unemployment	Lower turnover in labor markets	Lower costs of government	Increased satisfaction with life	Higher level of consumer expenditures	Case service cost	Administrative and overhead costs	Increased receipt of P.A. during VR	Income loss during program	Increased taxes for programs
Individual															
Society	X	X			X	X			X	X				X	X
Employers															
Federal Government			X	X			X	X			X	X			
State government			X	X			X	X			X	X			
Vocational Rehabilitation Agency	X	X								X				X	

TABLE 2.—*Data used in a benefit/cost calculation*

<i>Model variable and source of data</i>	<i>Value</i>
1. Total number of clients, sample number-----	417.
2. Time periods, U.S. Department of Health, Education, and Welfare study.	25 years.
3. Percentage clients used in model of total number clients, sample number.	100 percent.
4. Number of clients closed in time period, ¹ sample number--	Do.
5. Social time preference rate, Wall Street Journal-----	6 percent.
6. Average annual income at closure, ¹ followup study-----	
7. Average annual income at acceptance, ¹ followup study---	
8. Attrition rate after closure, U.S. Department of Health, Education, and Welfare study.	4 percent.
9. Attrition rate before acceptance, U.S. Department of Health, Education, and Welfare study.	10 percent.
10. Annual rate of wage increase after closure, followup study.	4 percent.
11. Annual rate of wage increase before acceptance, followup study and U.S. Department of Health, Education, and Welfare study.	3 percent.
12. Percent of clients working after closure, followup study--	70 percent.
13. Weekly wage at closure, followup study-----	\$75.72.
14. Number of weeks worked, followup study-----	42.1 weeks.
15. Percent of clients working before acceptance, followup study.	52 percent.
16. Weekly wage at acceptance, followup study-----	\$34.98.
17. Number of weeks worked before acceptance, followup study.	20.5 weeks.
18. Number of months a client can receive assistance payments, followup study.	17.1 months.
19. Average monthly net increase or decrease in assistance payments, ¹ followup study.	
20. Annual rate of growth of assistance payments, U.S. Department of Health, Education, and Welfare study.	3 percent.
21. Percent of clients receiving assistance at acceptance, followup study.	10 percent.
22. Monthly assistance payment before acceptance, followup study.	\$134.58.
23. Percent of clients receiving assistance after closure, followup study.	5 percent.
24. Monthly assistance payment after closure, followup study.	\$137.88.
25. Average annual unemployment rate for Michigan, Michigan statistical abstract.	4.4 percent.
26. Net number of household members entering or leaving the labor force, ¹ followup study.	
27. Average annual wage for Michigan, Michigan statistical abstract.	\$53.
28. Average annual rate of wage increase for Michigan, Michigan statistical abstract.	6 percent.
29. Number employable persons per household, followup study.	0.51.
30. Percent entering labor force, followup study-----	1 percent.
31. Percent leaving labor force, followup study-----	5 percent.
32. Average case service cost per client, internal cost records.	\$331.50.
33. Fixed administrative multiplier, internal cost records--	2.0.
34. Number of months clients receive assistance payments, followup study and case records.	13.1.
35. Percent clients who receive assistance payments during VR, followup study and case records.	10 percent.
36. Assistance payment received by client during VR, followup study.	\$155.55.

¹ Calculated as the sum of other variables in the model.

TABLE 4.—BENEFIT/COST RATIOS FOR SELECTED CLIENT GROUPS SERVED BY THE MICHIGAN VOCATIONAL REHABILITATION SERVICE

Client group	Year of closure	Benefit/cost ratios	
		Lifetime	2 years
Rehabilitants-in-general.....	1969	26:1	2.9:1
Physically handicapped.....	1969	25:1	2.7:1
Mentally ill.....	1969	26:1	3.0:1
Mentally retarded.....	1969	30:1	3.5:1
Workers' compensation.....	1969	39:1	4.6:1
Public assistance recipients.....	1969	18:1	2.5:1
Rehabilitants-in-general.....	1971	18:1	1.7:1
Public assistance recipients.....	1971	19:1	2.3:1
Youth rehabilitants.....	1971	23:1	2.5:1
State rehabilitation center.....	1971	11:1	1.0:1
Rehabilitants-in-general.....	1974	23:1	2.3:1
Moderately handicapped.....	1974	29:1	3.0:1
Severely handicapped.....	1974	14:1	1.2:1

WASHINGTON, D.C., July 25, 1977.

HON. JAMES A. BURKE,

Chairman, Subcommittee on Social Security, House Ways and Means Committee, Washington, D.C.

DEAR CONGRESSMAN BURKE: The American Congress of Rehabilitation Medicine, a multidisciplinary organization of some 2,500 physicians, nurses, therapists and other professionals dealing with the handicapped, and the American Academy of Physical Medicine & Rehabilitation, the physical specialty group of physicians specializing in rehabilitation, and a member of the American Medical Association Interspecialty Council, wish to associate themselves with the remarks of Ms. Margaret Pfrommer and Mr. Hunt Hamill, delivered before the Subcommittee on July 21, 1977. We would hope that this letter to you would be inserted in the record to indicate our support for the positions taken by those 2 individuals during their testimony on July 21.

In particular, we would like to draw the Committee's attention to the serious inequity and unsound policy involved in the limitation on earnings for a disabled individual which in effect will result in severely disabled individuals being discouraged from work. In fact, Ms. Pfrommer, an extraordinarily talented and courageous person, has been unable to receive pay for full time work which she is doing because if she received money in excess of \$2,400 a year (\$200 a month), she would lose disability insurance benefits and she would also lose SSI benefits which she has. Ms. Pfrommer is not covered under disability insurance but is covered under SSI. However, had she worked long enough to be covered under disability insurance, she would not have been able to work and retain her disability insurance benefits either. In order to work and be better off economically than not working, Ms. Pfrommer would have to earn something in the neighborhood of \$8,000 or more since her basic expenses directly related to her handicap, expenses which are necessary to enable her to function independently and work, are about \$8,000 a year.

Those expenses include such things as attendant care in the home and special transportation expenses. Currently such expenses are not deductible from one's income for purposes of computing income under Title II or Title XVI. The work-related expenses which are permitted under Title II (they are not permitted for the disabled under Title XVI as far as we can tell), are very narrowly limited as far as we can tell. It appears that such expenses are allowable only where the expenses would not have to be incurred if the person was not working. Obviously, expenses such as special transportation and attendant care which are generally needed for a person who is severely disabled (quadriplegia) are also obviously needed in order to work. The law very badly needs rectifying in this respect and the recommendation made by Ms. Pfrommer and Mr. Hamill clearly would cure the present problem. The recommendation involved allowing handicapped individuals to take as deductions from their countable income for purposes of determining SGA or SSI eligibility all expenses directly related to the handicap which are for purposes of enabling the handicapped individual to function independently. Such expenses would include the costs of attendant care

(care related to bathing, dressing, and taking care of the home), and transportation expenses.

We would also fully support the recommendations of Ms. Pfrommer and Mr. Hamill that the SGA earnings amount be increased to \$300 per month and the recommendation that the trial work period which is currently limited to 9 months be expanded to 18 months.

Furthermore, we strongly endorse the recommendation that the disabled who would otherwise be eligible for Title II benefits and Medicare not have to wait the 24-month period before Medicare coverage applies for those services which are medical rehabilitation services and are included in a rehabilitation plan approved by a qualified physician. Under this proposal, as soon as an individual was determined to otherwise meet the eligibility requirements of Title II, no waiting of any type would be necessary in order to have Medicare benefits flow to that individual for his or her medical rehabilitation. The point of this proposal is an obvious one. Disability and health care policy should encourage the early application of rehabilitation services in order to restore the disabled person as fully as possible to her or his normal functioning status and enable him or her to regain a position in the economy or at least to be able to live in his or her own home and avoid institutionalization.

If I can provide you with any further materials, or be of any help to you whatsoever, please do not hesitate to call.

Sincerely,

RICHARD E. VERVILLE,
*Counsel, American Congress of Rehabilitation
Medicine, and American Academy
of Physical Medicine and Rehabilitation.*

Mr. PICKLE. The next panelists will be a group representing the National Association of Disability Examiners, Mr. Richard Parsons, president, and Mr. Robert Dean, president-elect. Who is Mr. Parsons?

Mr. PARSONS. I am Mr. Parsons, sir.

Mr. PICKLE. You gentlemen may proceed.

STATEMENT OF RICHARD PARSONS, PRESIDENT, NATIONAL ASSOCIATION OF DISABILITY EXAMINERS, ACCOMPANIED BY ROBERT DEAN, PRESIDENT-ELECT

Mr. PARSONS. Mr. Chairman, we do have written testimony which has been submitted and which we would like to more briefly summarize at this time.

Mr. PICKLE. Your statements will be included in the record and you may proceed to summarize it.

Mr. PARSONS. As indicated, I am the president and Mr. Dean is president-elect of the National Association of Disability Examiners, which represents those professional employees who are engaged in making the disability determinations in the social security program. We would like to offer comments at this time on several of the provisions of the bill recently introduced to Mr. Burke, H.R. 8076, and an earlier bill submitted by Representative Levitas, the bill he introduced as H.R. 5064. Most of these provisions are not new, and where possible, we have endeavored to seek the widest possible base of participation of our membership in these comments so that this testimony might truly represent the consensus of our membership.

Briefly, we would like to commend the authors of H.R. 8076 for presenting what we feel is a reasonable, well-considered piece of legislation. Our association can happily lend its support to this bill, with only minor reservations. It is clearly superior, in our viewpoint, to any of the other social security-related bills offered in recent months.

In the outline of proposed testimony which we recently submitted, we took the position that the definition of disability contained in the Social Security Act should not be amended at this time, but rather be subject to more intensive study.

I think I could summarize our feeling by the old statement that democracy is a very poor form of government, it is just that it is so much better than all of the other forms of government. I think the more I hear and see the more I am inclined to feel this was about our existing definition of disability. It does have its problems but we are not totally convinced that anything else we have seen is really going to result in improvement.

In introducing the present bill, Chairman Burke has indicated close attention will be given to progress by the Social Security Administration in implementing the so-called vocational grid system designed to make disability determination involving vocational factors more uniform and replicable. It was indicated that this would be followed closely, particularly at the administrative law judge level. The majority of disability examiners do favor implementation of such a grid, and strongly support a move to place adjudication at the administrative law judge level on the same basis as at the initial and reconsideration levels.

It is frustrating in the extreme for a disability examiner to carefully develop a disability claim which results in a denial, and to go to great lengths to assure that this decision has been made in accordance with published guidelines, and to see this determination reversed by an administrative law judge with what seems to be a total disregard for these standards, and, in many instances, the Social Security Act itself. This is not in any way to cast aspersions on the capability or integrity of individual appeal law judges, but, rather, to highlight the effect of the situation whereby the vocational guidelines on which decisions are made at the initial and reconsideration level are not binding upon the administrative law judges. It is our firm belief that the administrative law judges are allowed a degree of latitude in making their decisions which is totally in conflict with every effort being made to increase the uniformity and replicability of decisions.

Turning to the definition of disability proposed in H.R. 8076, we would find this definition much more appropriate than that offered by Representative Levitas. The requirement for individuals under age 50 to meet or equal medical standards if they are to be allowed does not differ materially from present practice. The proposed revision in standards for those over age 50 would indeed institute a more liberal standard, but the assumption that this decision would be less subjective is viewed with caution.

Lastly, while we can readily understand the difficulty in balancing costs, we are less than comfortable with the proposed reduction of benefits for those who are allowed on a vocational basis. Any work-incentive value of this provision would seemingly be mitigated by the reduced vocational opportunities available to individuals in this older age bracket.

Another proposal contained in the bill which is intended to increase the uniformity of decisionmaking is a return to 100 percent review of these claims which were allowed on a medical basis. Our members

have consistently opposed a return to 100 percent review for a variety of reasons. First, this recommendation seems to miss the fundamental point of statistical quality control, which is that the characteristics of a large population can be accurately estimated by examination of a relatively small sample.

The cost of 100 percent review of these cases could very well offset the value of benefits saved by reversing State agency allowances in the number of cases which one would expect in a 100 percent review. There is ample experience in other settings to indicate that overall quality is often not improved by 100 percent review, in that the responsibility for the quality of the product is clearly removed from the people who are making the primary decision.

Lastly, there is another cost to 100 percent review and this cost would be borne by the disability claimant. A review of 100 percent of these claims prior to payment will add substantially to the time from application to receipt of benefits, a time which is already working a hardship on many claimants. If, conversely, the review would be done after adjudication, a substantial number of individuals would be subjected to the trauma of just beginning to receive benefits and then being told it was all a big mistake.

Another provision of II.R. 8076 as well as II.R. 5064 which we strongly endorse, and which we feel would contribute to the quality of documentation of disability claims, is the provision of payment for medical evidence solicited in title II claims. Our inability to pay for such evidence has always created problems with the medical community. Significant numbers of physicians simply refuse to provide evidence under these circumstances. Inability to obtain crucial evidence from a claimant's treating physician in such cases can only have an adverse effect upon the quality of the ultimate determination. At worst, it may well result in denial of benefits to a claimant who is truly disabled.

We would also like to lend our support to the provisions in II.R. 8076, section 8, concerning funding for vocational rehabilitation services. Shifting of the majority of funds to the regular vocational rehabilitation budget should eliminate a lot of administrative complexity and accounting costs, and reduce the frustrating paperwork falling upon rehabilitation counselors. Second, the provision of bonus matching funds where it is actually demonstrated that a claimant has been rehabilitated and terminated from benefit status for a significant period is well-designed to reward successful performance by the State vocational rehabilitation agency.

Reconsideration and appeals processes: Disability examiners generally are in favor of extending the reconsideration interview process to all States. As noted by Representative Burke in his introductory comments, it is perhaps not certain whether the program can be justified in terms of reduced costs of hearings, and may result in a slightly higher overall allowance rate. However, it seems certain that this provision will provide better service to the public.

We would also like to offer our support to the proposal for the institution of disability courts. This should contribute to the uniformity of decisionmaking at the hearings level. A provision of II.R. 5064 we also feel has merit is the requirement for the Secretary to be repre-

sented by counsel at these hearings. We also concur that the claimant should have counsel available, but with some reservations as to the advisability of having the claimant represented by attorneys hired by SSA or BHA on a salary basis.

Turning to the State/Federal system of administration, the basic conclusion of the GAO to the effect that the Social Security Administration must exert a stronger leadership role in the disability program seems to be well-founded, and generally accepted. In order to allow SSA to do so, however, it seems inescapable that there must either be a material strengthening of the State/Federal contracts, or full and immediate federalization of the disability determination units.

The present bill proceeds from the assumption that it is still desirable to retain the basic State/Federal method of administration. We would strongly support the approach taken by the bill's authors toward making the best of the present structure.

As Chairman Burke has pointed out so clearly in his introduction to the bill, it is absolutely essential that if the structure is to be strengthened, the Secretary of HEW must be provided with some alternative method of operation, in the event of either the refusal of a given State to continue to operate a disability determination unit, or the failure of a State to substantially meet the requirements of the contract. Furthermore, this alternative must provide not only for protection of the rights of the State employees involved, but for retention of the substantial number of skilled employees which would otherwise be lost to the system. The provision in H.R. 8076 to provide federalization of such a unit with appropriate safeguards for the rights of the employees involved would seem to be the only satisfactory method of insuring an orderly transition to Federal operation.

We would very much like to express our appreciation for the provisions included in the bill, patterned after the National Guard Technician's Act, which would appear to offer very good protection to the employees involved.

We would also strongly endorse the provision of the bill to establish greater control over what is known as indirect costs, whereby the State/parent agency is reimbursed by formula for services rendered to the disability determination unit. These indirect costs figures in the various States appear to be in a continuous upward spiral from seemingly reasonable levels to a significant number of States who are claiming indirect costs in the 50- to 60-percent range, or higher.

In the absence of any form of accountability for these expenditures, it is difficult to understand what services the parent agency could be providing to justify such large charges to the trust fund.

While the present bill represents the best approach we have seen to improvement of the present structure, nonetheless, we continue to believe that the best response to the situation is full federalization of all State agencies, subject to the provisions outlined in H.R. 8076.

While NADE's position on this issue is clear, and well-established, our association is not alone in taking this position. We have appended a summary of previous testimony on the subject, which we would like to ask be a part of the record at this time.

We will not attempt at this time to reiterate the many arguments in favor of federalization, but rather to point out a few of the ways in which we feel the disability program would be benefited by federalization, and which would not result from even the best-conceived approach to cleaning up the present structure.

Federalization of the State agencies should result in increased administrative flexibility. Staff could be detailed or transferred in order to meet peak workloads, adjust staffing levels, or provide broader experience. It should also result in an increased flow of information and ideas between the disability units, which now tend to be isolated and ingrown. Each DDS essentially tends to be out in the field reinventing the wheel for itself. This, we believe, accounts in large part for the marked variation in methods and procedures as well as policy interpretations which has been noted by the GAO and others.

Federalization should also result in an increased flow of field-experienced personnel into regional and central offices of the Bureau of Disability Insurance. This should be of great benefit to the administration of the program and should also help to reduce the present situation wherein claims adjudicated by examiners with extensive experience in the State agencies are now reviewed at the regional level by examiners who, in many cases, have only limited training and experience and, as a general rule, no field experience whatsoever.

Federalization should result in a reduction of turnover of skilled staff in that it would provide opportunity for people to transfer from one State to another, and generally enlarge the career ladder for skilled employees.

Furthermore, it does not appear that any revision of contracts can deal with the marked discrepancies in salaries between the various States noted in your committee staff report of July 1974, or the corresponding discrepancy between State salaries as a whole, and salaries paid to comparable Federal employees. We do not wish to appear to be unduly concerned with bread and butter issues, but we do represent a group of people who are not receiving equitable salaries. Equal pay for equal work is not an unreasonable expectation.

Last, federalization should resolve the considerable confusion on the part of the claimants and the general public, resulting from the present arrangement. It is often difficult indeed for a claimant to understand why, when he has filed for Federal benefits, he is being asked to provide information and undergo examinations required by a State agency.

For these reasons, among others, we hope that the Congress will give serious consideration to taking the one additional step beyond the provisions in H.R. 8076, and fully integrate the disability program by federalization of the State disability units.

I would like to add a comment. It has often been indicated that it is of great importance to retain the State agencies in order to facilitate the referral process. We would strongly agree that it is essential that we continue to work closely with the rehabilitation program, but we are talking here about roughly 23 percent of all the claims we handle. I am hard pressed to understand why this should outweigh the consideration of having a close working relationship with the Bureau of Disability Insurance with whom we must relate on 100 percent of the claims.

Last, I would like to refer very briefly to an item in the second page of the supplemental.

Mr. PICKLE. Mr. Parsons, I should have mentioned to the group this morning, we are on a very tight time schedule. We have asked all the witnesses to stay under the 10 minutes. So, I must ask you to try to summarize the additional remarks.

Mr. PARSONS. I can complete this in approximately 1 minute or less.

I would like to refer to one situation. It is a common feeling it seems that the Federal Government is growing by leaps and bounds with tremendous numbers of employees coming onboard at all times. The information summarized in this appendix to our testimony indicates that in January 1957, the total salary of Federal employees amounted to some \$2.4 million which has increased in 20 years to \$2.8 million which is approximately 17 percent, while the population increased by 29 percent. Adding the 9,500 or so State employees to this would increase it by another three-hundredths of a percent. I think this relates to the argument often given that the federalization of this program would be adding seriously to a burgeoning Federal bureaucracy. I don't feel that is a valid argument and that is the reason I wanted to draw attention to that particular figure. That concludes our prepared comments.

[The prepared statement follows:]

STATEMENT OF RICHARD A. PARSONS, PRESIDENT, NATIONAL ASSOCIATION OF
DISABILITY EXAMINERS (NADE)

Mr. Chairman and members of the subcommittee, my name is Richard Parsons. I am an employee of the Colorado Disability Determination Services located in Denver, Colorado, and President of the National Association of Disability Examiners (NADE). The testimony which I offer is on behalf of the National Association of Disability Examiners, and it does not reflect the official position of the Colorado or any other state agency. While NADE is a professional division of the National Rehabilitation Association, the position stated herein are those of the Division, and not necessarily of the National Rehabilitation Association.

We would like to offer comments at this time on several of the provisions of the Bill recently introduced by Mr. Burke (H.R. 8076), and an earlier Bill submitted by Representative Levitas (H.R. 5064). Most of these provisions are not new, and where possible we have endeavored to seek the widest possible base of participation of our membership in these comments so that this testimony might truly represent the consensus of our membership.

Briefly, we would like to commend the authors of H.R. 8076 for presenting what we feel is a reasonable, well-considered piece of legislation. Our Association can happily lend its support to this Bill, with only minor reservations. It is clearly superior, in our view point, to any of the other Social Security-related Bills offered in recent months.

We would like to specifically discuss the content of this Bill, and certain features of H.R. 5064, under four basic areas: I. Measures Designed to Increase Quality and Consistency of Decisions; II. Disincentives and Rehabilitation; III. Reconsideration and Appeals Processes; and IV. The State/Federal System of Administration.

I. MEASURES DESIGNED TO INCREASE QUALITY AND CONSISTENCY OF DECISIONS

In the outline of proposed testimony which we recently submitted, we took the position that the definition of disability contained in the Social Security Act should not be amended at this time, but rather be subject to more intensive study. At that time, the most recently offered proposal for a revised definition was that contained in H.R. 5064.

One can readily understand the desire to avoid condemning people to a lifetime of disability, by advising them at the outset that their period of disability would last only until a specified date. Nonetheless, the decisions which would be re-

quired to be made by Disability Examiners as to the date on which the claimant would be fully recovered, or fully rehabilitated is in our view beyond the realm of feasibility. At a time when the major thrust of the GAO Studies, the subcommittee's staff studies, and virtually all other reviews of the Disability Program is toward seeking greater uniformity and replicability of decisions, this kind of provision would seem to be a giant step backwards. This conclusion is strongly supported by past experience with the continuing disability investigations initiated on disability claims. Experience has indicated that even in those cases which have been determined at initial adjudication to show likelihood of medical improvements, a relatively high percentage of claimants are found to be still under a disability at the time of the investigation. Predicting a specific cessation date in advance, we feel would require a degree of clairvoyance quite beyond what most of us possess.

In introducing the present Bill, Chairman Burke has indicated close attention will be given to progress by the Social Security Administration in implementing the so called "vocational grid" system designed to make Disability Determinations involving vocational factors more uniform and replicable. It was indicated that this would be followed closely, particularly at the ALJ level. The majority of Disability Examiners do favor implementation of such a grid, and strongly support a move to place adjudication at the ALJ level on the same basis as at the initial and reconsideration levels. It is frustrating in the extreme for a Disability Examiner to carefully develop a disability claim which results in a denial, and to go to great lengths to assure that this decision has been made in accordance with published guidelines, and to see this determination reversed by an ALJ with what seems to be a total disregard for these standards and, in many instances, the Social Security Act itself. This is not in any way to cast aspersions on the capability or integrity of individual Appeal Law Judges, but rather to highlight the effect of the situation whereby the vocational guidelines on which decisions are made at the initial and reconsideration level are not binding upon the ALJ's. It is our firm belief that the ALJ's are allowed a degree of latitude in making their decisions which is totally in conflict with every effort being made to increase the uniformity and replicability of decisions.

Turning to the definition of disability proposed in H.R. 8076, we would find this definition much more appropriate than that offered by Representative Levitas. The requirement for individuals under age 50 to meet or equal medical standards if they are to be allowed does not differ materially from present practice. The proposed revision in standards for those over age 50 would indeed institute a more liberal standard, but the assumption that this decision would be less subjective is viewed with caution. Evaluation of skills or abilities comparable to those of any gainful activity in which the claimant has previously engaged with some regularity and over a substantial period of time would in and of itself leave quite a lot of room for individual judgment. Specifically the terms "comparable", "some regularity", and "substantial period of time" are rather broad. It would also be inaccurate to assume that since this definition has applied to statutorily blind individuals in the past that this would be a definition which has been broadly used and would be well understood by adjudicators. The number of cases adjudicated under this concept in the past has been exceedingly small.

Last, while we can readily understand the difficulty in balancing costs, we are less than comfortable with the proposed reduction of benefits for those who are allowed on a vocational basis. Any work-incentive value of this provision would seemingly be mitigated by the reduced vocational opportunities available to individuals in this older age bracket.

Another proposal contained in the Bill which is intended to increase the uniformity of decision making is a return to 100 percent review of those claims which were allowed on a medical basis. Our members have consistently opposed a return to 100 percent review for a variety of reasons. First, this recommendation seems to miss the fundamental point of statistical quality control, which is that the characteristics of a large population can be accurately estimated by examination of a relatively small sample. Responsibility for the quality of decisions is at the production level with feed back provided by the quality review level. It is undoubtedly true that deficient allowances are being processed, and not subjected to Quality Assurance Review of any kind. On the other hand, it is not economically feasible to achieve a zero defect product, where the decisions involved are complex, and where in many cases it is clearly impossible to absolutely categorize a

decision as being right or wrong. The cost of 100 percent review of these cases could very well offset the value of benefits saved by reversing State Agency allowances in the number of cases which one would expect in a 100 percent review.

There is also ample experience in other settings to indicate that overall quality is often not improved by 100 percent review, in that the responsibility for the quality of the product is clearly removed from the people who are making the primary decision. Thus, we fear, there would be a strong tendency for Disability Examiners in the State Agencies to become less involved in the quality of their work, on the assumption that it didn't matter what they decided in any case, the decision was up to some face-less reviewer in Baltimore or the Regional Claims Review Section.

Last, there is another cost to 100 percent review and this cost would be borne by the Disability claimant. A review of 100 percent of these claims prior to payment will add substantially to the time from application to receipt of benefits, a time which is already working a hardship on many claimants. If, conversely, the review would be done after adjudication, a substantial number of individuals would be subjected to the trauma of just beginning to receive benefits and then being told it was all a big mistake.

Another provision of H.R. 8076 as well as H.R. 5064 which we strongly endorse, and which we feel would contribute to the quality of documentation of disability claims, is the provision of payment for medical evidence solicited in title II claims. Our inability to pay for such evidence has always created problems with the medical community, which have greatly increased subsequent to implementation to SSI, which provides for payment of such evidence in cases involving an SSI Claim. Many physicians are quite offended by being told that they can be paid for evidence in one case, and not in another. Significant numbers of physicians simply refuse to provide evidence under these circumstances. Inability to obtain crucial evidence from a claimant's treating physician in such cases can only have an adverse effect upon the quality of the ultimate determination. At worst it may well result in denial of benefits to a claimant who is truly disabled.

II. DISINCENTIVES AND REHABILITATION

Our Association would like to commend the committee and its staff for its efforts to deal with these problems. We would like to offer our support across the board for the provisions in the bill for removing disincentives to return to work. Specifically, the provision of section 9, H.R. 8076 is one which, had it not been inserted in this newest bill, we would have in any case recommended. This provision provides for continuation of disability benefits during an approved VR program. I am certain that any Disability Examiner who has been in the business for any length of time can cite instances in which he or she was by law and regulation required to cease benefits at a time when the disability claimant was in the latter stages of a rehabilitation program. Undoubtedly, in many such instances, the rehabilitation program is disrupted or destroyed, for lack of available subsistence funds to carry the claimant through completion of their program. This situation, has as a matter of fact, been a source of considerable ill will between Disability Examiners, and Rehabilitation Counsellors over the years.

We would also like to lend our support to the provisions in H.R. 8076, section 8 concerning funding for Vocational Rehabilitation services. Shifting of the majority of funds to the regular VR Budget should eliminate a lot of administrative complexity and accounting costs, and reduce the frustrating paperwork falling upon rehabilitation counsellors. Second, the provision of "bonus matching funds" where it is actually demonstrated that a claimant has been rehabilitated and terminated from benefit status for a significant period is well-designed to reward successful performance by the state VR Agency.

III. RECONSIDERATION AND APPEALS PROCESSES

Disability Examiners generally are in favor of extending the reconsideration interview process to all states. As noted by Representative Burke in his introductory comments, it is perhaps not certain whether the program can be justified in terms of reduced costs of hearings, and may result in a slightly higher overall allowance rate. However, it seems certain that this provision will provide better service to the public. There is an unfortunate tendency in the processing of large volumes of disability claims for everything to be boiled down to a series of form letters coming from different components of the system, few of which are really

very meaningful to the claimant, and none of which offer the claimant any opportunity to confront anyone who has contributed to the adverse decision, ask questions, or to gain any understanding of the reason for the denial. The reconsideration interview process should, if nothing else, have a humanizing effect on what otherwise tends to be a very large, impersonal, and incomprehensible program. We would recommend, however, that the hearings should only be offered to the claimant in cases where review of the existing evidence and conventional development does not support a reversal of the decision. It would seem to be unduly expensive to provide such interviews to the claimant who would clearly be receiving a favorable response to his request for reconsideration.

We would like to issue a cautionary note with respect to one related provision, that being the 60-day time limit on processing of reconsideration claims. Review of case processing data from the Colorado State Agency confirms the general impression that most reconsideration claims are processed rather quickly. However, a significant number of those which are not processed in the first twenty to thirty days, seem to be difficult claims, which often require in excess of 60 days to fully develop, and give the claimant a full, fair reconsideration. It appears that a significant number of these claims are cases which have been denied at the initial level because of unusual difficulty in obtaining medical records supporting alleged disability. If excessive pressure is applied at the reconsideration level to process these claims quickly, it would seem to increase the risk of these claims again being denied on the basis of insufficient evidence, when a little more diligence and patience in dealing with unresponsive medical sources can result in a favorable decision.

We would also like to offer our support to the proposal for the institution of disability courts. This should contribute to the uniformity of decision-making at the hearings level. A provision of H.R. 5064 we also feel has merit is the requirement for the Secretary to be represented by counsel at these hearings. We also concur that the claimant should have counsel available, but with some reservations as to the advisability of having the claimant represented by attorneys hired by SSA or BHA on a salary basis.

IV. THE STATE/FEDERAL SYSTEM OF ADMINISTRATION

The basic conclusion of the GAO to the effect that the Social Security Administration must exert a stronger leadership role in the Disability Program seems to be well-founded, and generally accepted. In order to allow SSA to do so, however, it seems inescapable that there must either be a material strengthening of the state federal contracts, or full and immediate federalization of the Disability Determination Units. The present Bill (H.R. 8076) proceeds from the assumption that it is still desirable to retain the basic State/Federal method of administration. We would strongly support the approach taken by the Bill's authors toward making the best of the present structure. As Chairman Burke has pointed out so clearly in his introduction to the Bill, it is absolutely essential that if the structure is to be strengthened, the Secretary of HEW must be provided with some alternative method of operation, in the event of either the refusal of a given state to continue to operate a Disability Determination Unit, or the failure of a state to substantially meet the requirements of the contract. Furthermore, this alternative must provide not only for protection of the rights of the state employees involved, but for retention of the substantial number of skilled employees which would otherwise be lost to the system. The provision in H.R. 8076 to provide federalization of such a unit with appropriate safeguards for the rights of the employees involved would seem to be the only satisfactory method of insuring an orderly transition to federal operation. We would very much like to express our appreciation for the provisions included in the bill, patterned after the National Guard Technician's Act, which would appear to offer very good protection to the employees involved.

We would also strongly endorse the provision of the Bill to establish greater control over what is known as "indirect costs", whereby the state/parent agency is reimbursed by formula for services rendered to the Disability Determination Unit. These indirect costs figures in the various states appear to be in a continuous upward spiral from seemingly reasonable levels to a significant number of states who are claiming indirect costs in the 50 to 60 percent range, or higher. In the absence of any form of accountability for these expenditures, it is difficult to understand what services the parent agency could be providing to justify such large charges to the trust fund.

While the present Bill represents the best approach we have seen to improvement of the present structure, nonetheless, we continue to believe that the best response to the situation is full federalization of all state agencies, subject to the provisions outlined in H.R. 8076. A resolution to this effect was passed by our most recent Delegate Assembly, by a margin of 215 delegate votes in favor, 66 votes opposing, and 4 abstaining.

While NADE's position on this issue is clear, and well-established, our Association is not alone in taking this position. We have appended a summary of previous testimony on the subject, which we would like to ask be a part of the record at this time.

We will not attempt at this time to reiterate the many arguments in favor of federalization, but rather to point out a few of the ways in which we feel the Disability Program would be benefited by federalization, and which would not result from even the best-conceived approach to cleaning up the present structure.

Federalization of the State Agencies should result in increased Administrative flexibility. Staff could be detailed or transferred in order to meet peak workloads, adjust staffing, levels, or providing broader experience. It should also result in an increased flow of information and ideas between the Disability Units, which now tend to be isolated and ingrown. Each DDS essentially tends to be out in the field reinventing the wheel for itself. This, we believe accounts in large part for the marked variation in methods and procedures, as well as policy interpretations which has been noted by the GAO and others.

Federalization should also result in an increased flow of field-experienced personnel into regional and central offices of the Bureau of Disability Insurance. This should be of great benefit to the administration of the program and should also help to reduce the present situation wherein claims adjudicated by examiners with extensive experience in the state agencies are now reviewed at the regional level by examiners who in many cases have only limited training and experience, and as a general rule no field experience whatsoever.

Federalization should result in a reduction of turn over of skilled staff in that it would provide opportunity for people to transfer from one state to another, and generally enlarge the career ladder for skilled employees.

Furthermore, it does not appear that any revision of contracts can deal with the marked discrepancies in salaries between the various states noted in your committee staff report of July, 1974 or the corresponding discrepancy between state salaries as a whole, and salaries paid to comparable federal employees. We do not wish to appear to be unduly concerned with bread and butter issues, but we do represent a group of people who are not receiving equitable salaries. Equal pay for equal work is not an unreasonable expectation.

Last, federalization should resolve the considerable confusion on the part of the claimants and the general public, resulting from the present arrangement. It is often difficult indeed for a claimant to understand why, when he has filed for Federal Benefits, he is being asked to provide information and undergo examinations requested by a State agency.

For these reasons, among others, we hope that the Congress will give serious consideration to taking the one additional step beyond the provisions in H.R. 8076, and fully integrate the disability program by federalization of the State disability units.

Thank you for your kind consideration of these remarks.

ADDITIONAL VIEWS IN SUPPORT OF FEDERATION

Mr. Chairman, the National Association of Disability Examiners (NADE) members want to commend you, the Committee members and the Staff for the exhaustive studies, investigations, GAO reports and Public Hearings which have been conducted and reported since July 1974 on the status and operation of the Disability Insurance Trust Fund. The recently published 1977 Annual Report of the Trustees of the Social Security Trust Funds makes no mention of the actual operation of the Disability Insurance Trust Fund. The managing Trustee is Treasury Secretary W. Michael Blumenthal; HEW Secretary Joseph A. Califano, Jr. and Labor Secretary Ray Marshall are the other Trustees. The Commissioner of Social Security, James B. Cardwell, is Secretary to the Board. On July 18, 1977 at Hearings before the House Social Security subcommittee Mr. Wilbur J. Cohen remarked that Congress is the "Board of Directors." If it were not for the diligence of your committee the American people would not be aware of how the Trust is being managed. We must always keep in mind the fact that Trust Funds for Disability Insurance are paid for by the public and the

employers. The Federal Government itself makes no contribution to the Trust Fund. Hence there is a special responsibility vested in the Trustees to be sure the management of the Trust Fund is operated in the best interests of the beneficiaries, disabled Americans.

Since many members of Congress are lawyers they must realize that this Trust Fund is the most unique Trust ever created and the responsibility for determining the "beneficiary's disability" is vested in 54 non-federal agencies.

Before going into detail relative to the NADE position on federalization we wish to discuss a very erroneous myth that exists at the White House, on Capitol Hill, in the Federal Bureau, in business and in the minds of the American people. The Radio-TV-News and newspapers persist in perpetuating this myth. During the last political campaign we heard much discussion about the vast Federal Bureau on the backs of the American people. It is time to be honest and straightforward with the American people and they should be presented some facts concerning Federal Government employment. These are:

	Total paid employees			
	Jan. 1, 1977	Jan. 1, 1976	Jan. 1, 1967	Jan. 1, 1957
Total, executive branch (1001 WOC).....	2,791,710	2,808,712	2,822,789	2,376,513
Total, legislative branch.....	38,441	37,701	26,825	22,190
Total, judicial branch.....	12,050	10,794	6,189	4,608
Total.....	2,842,201	2,857,207	2,855,803	2,403,311

Source: U.S. Senate Committee on Governmental Affairs, data as of Jan. 1, 1977; does not include uniformed Armed Services personnel.

In June 1977 the Conference Board, a privately financed research institute, reported that the number of State and Local government employees rose from approximately 5 million in 1955 to 12.1 million in 1975, an increase of 142 percent for the period. At the same time the U.S. population rose from an estimated 165 million to 213 million people, an increase of 29 percent for the 20-year period. (Source: Dept. of Commerce, Census Bureau. Excludes U.S. citizens living overseas.)

For the period 1957 to 1977 the number of federal employees rose from approximately 2.4 million to 2.8 million, an increase of 17 percent, while the U.S. population rose from an estimated 171 million to 216 million people, an increase of 26 percent for the same period.

During the years 1970-75 Federal employment increased by less than 0.1 percent. (The percentage of Federal Government employees to the total population is approximately 1.3 percent.)

While NADE acknowledges a substantial growth in the number of Government employees, it is important to note that the mushrooming of government employees has occurred at the state and local level, not in the Federal system.

The concern over a growing federal bureaucracy is unwarranted and should not prevent the federalization of the state disability determination units which total approximately 9500 employees already being paid by Federal funds.

RATIONALE FOR THE FEDERAL-STATE STRUCTURE

Title II of the Social Security Act as amended established the Social Security Disability Insurance Trust with funds provided by the Social Security Tax. The intent was to provide insurance in the event that a worker became disabled. It was not exactly a give-away program. The claimant had to meet certain criteria for eligibility, namely, medical proof of the disability and long-term status as a trust member. All that remained was the establishment of an effective system to administer the Disability Insurance Trust Program.

Mr. Burke, in the Congressional Record of June 28, 1977, explains the rationale: "When the program was established in the 1950's, an effective rehabilitation program and good working relationships with the medical profession were deemed essential. For these reasons, Congress indicated that it wanted the actual determination of disability to be carried out by the State vocational rehabilitation agencies. Thus, the law directed the Secretary of Health, Education and Welfare to contract with the State vocational rehabilitation agency, or another agency the State might designate, to carry out the function of determining disability under

the Federal program. This same system has been carried over into the SSI program (which began in 1974)".

As stated the arguments in favor of the Federal-State administration of the Disability Insurance Program were based on effective rehabilitation services provided to the beneficiary as well as good working relationships with the medical profession.

Concerning the latter, the State Disability Determination Units have developed the expected good working relationships with the medical profession over the past 20 years. There is no reason to suspect that this relationship would dissolve under Federalization.

The effective rehabilitation services have been found lacking as Mr. Burke points out: "In the Social Security Amendments of 1965, Congress provided that disability insurance trust fund money could be used to reimburse the States for the cost of rehabilitation services to disability beneficiaries. Under this provision, the total reimbursement could not, in any year, exceed 1 percent of the amount of social security disability benefits for the previous years. The Senate Finance Committee report on the 1965 act stated that only about 3,000 disability beneficiaries were "rehabilitated" in any previous year mainly because of the lack of State funds to match the available Federal funds. Although the amount of trust funds available for beneficiary rehabilitation has increased from about \$15 million in 1967 to almost \$100 million in 1976, the bottom line—terminations due to rehabilitation—has been disappointing. Cumulatively over these 9 years, only 20,000 disabled workers who have been "rehabilitated" have been terminated from the rolls. This was during a period of time when the number of disabled workers on the rolls was increasing from 1.5 to 2.5 million."

Rehabilitation services have not been effective in reducing costs to the Disability Insurance Trust Fund. A bill, H.R. 8076 95th Congress, 1st Session, introduced by Mr. Burke, consolidates the funding of rehabilitation services for Social Security Disability Insurance beneficiaries under the regular Vocational Rehabilitation program.

While the Federal-State structure may once have been the most reasonable way of providing services under the Disability Insurance Trust Program, the rationale for maintaining the status-quo has effectively been put to rest.

The Burke bill H.R. 8076 effectively satisfies the only objection of the Commissioner of Social Security William L. Mitchell had when he testified before the Harrison Subcommittee in 1960 and stated: "that the basic Federal-State structure could be maintained at least for the present, although he believes that, from a social insurance point of view, a direct-line Federal operation could be expected to result in simpler and more efficient procedures, with possible improvements in uniformity and processing time. He pointed out that a substantial commitment has been made to States agencies administering the disability program and that it could be seriously disturbing the State rehabilitation programs to withdraw from this arrangement at this time." (Ways and Means Committee Staff Report on the Disability Insurance Program, July 1974, page 18)

EFFECTIVENESS OF THE FEDERAL-STATE STRUCTURE

Since the Disability Insurance program's inception serious questions have been raised about the effectiveness of the Federal-State mechanism to provide a uniform and equitable method of determining "disability" for the beneficiaries of the Trust.

In the Ways and Means Committee Staff Report on Disability Insurance July 1974, the staff points out the unique manner in which the Federal Social Security Disability Trust is managed:

"This Federal-State administration introduced an entirely new concept in the Federal social insurance system. Unlike the grant-in-aid programs, the relationship between the Department and the States is a contractual one, with no implementing State legislation involved. However, State laws and practices are controlling with regard to many administrative aspects since the personnel are State employees and are controlled by various departments of the State government. The State agencies, acting on behalf of the Secretary of Health, Education and Welfare, make determinations of disability on the basis of standards and guides provided by the Department. The costs of making the determinations and other aspects of the State disability operations are paid from disability trust fund money by way of advancements of funds or reimbursement to the contracting agency.

"Agreements are now in effect with 54 contracting agencies; in South Carolina there is also a separate contracting agency for the blind. The contracting agency designated by the State is the vocational rehabilitation agency, except that in four States (New York, North Carolina, Oklahoma, and Washington) it is the agency administering the public assistance programs, and Arkansas and Idaho have completely separate disability determination agencies."

The Harrison Subcommittee of 1960 received testimony from officials of the General Accounting Office, the National Federation of the Blind and the AFL-CIO suggesting changes in the Federal-State relationship. It was pointed out that the development of a disability claim by both Social Security Administration district offices and State agencies resulted in increased processing time and cost. Furthermore, the actual disability determination is made by State agency personnel paid with Disability Trust Funds, although the program authority and ultimate responsibility are Federal in scope.

The Harrison Subcommittee was concerned over variations from state to state in important areas of the Disability Insurance Program. In the 1950's and 1960's the Federal-State contracts resulted in a lack of uniformity and equal treatment for disability applicants. The situation remains the same today.

Mr. Ralph Abascal, Deputy Director, California Rural Legal Assistance, testified before the House Subcommittee on Social Security in 1975 stating: "I cannot shake the intuitive conclusion that the present system of initial determinations by the 50+ state agencies is one of the substantial causes of the 'appeals crisis.' All of the arguments in favor of the status quo, summarized by the staff in its monumental July, 1974 Report, all seem to be predicated upon inertia and political considerations. *All of the arguments in favor of federalization seem to point to the benefit of claimants.* I think it undeniable that there would be greater uniformity and faster processing times in a federalized system. Such consequences cannot help but reduce appeals. Congress has waited for 16 years for the HEW report on this issue urged upon the agency in 1959 GAO study." (Emphasis added.) (Hearings before the Subcommittee on Social Security September 1975, p. 104)

The exact language in the GAO report of 1959 (five years after the program originated) referred to by Mr. Ralph Abascal reads: "To determine whether the benefits derived from the States' participation in the disability insurance program are commensurate with the costs, we recommend that the Secretary of Health, Education and Welfare review and evaluate the present Federal-State arrangement to determine the best arrangement for making disability determinations and that he report thereon to the appropriate legislative committees of the Congress." (Ways and Means Committee Staff Report on the Disability Insurance Program, July 1974, page 4)

Such an evaluation and determination has never been done even to this day. Once again the Subcommittee on Social Security has had to take the responsibility for obtaining cost data on the Federal-State disability determination program. On May 13, 1977 the Administrators of the State Disability Determination Services have been requested to provide data for a study it is conducting "of state agency salary and pension benefits to develop cost data on various alternatives for the administration of the disability program." Such data is not available at HEW. We of NADE will be interested in reviewing the results of this study.

In 1972 the Colorado Chapter of the National Association of Disability Examiners prepared an issue paper entitled, "Joint Federal-State Administration of the Social Security Disability Program 1972: An Obsolete Partnership?"

This paper illustrates several areas of concern that would be alleviated by Federalization of the State Disability Examiners:

The lack of uniform application of standards and guidelines as issued by the Social Security Administration.

An efficient system of providing face-to-face contact between examiners and applicants in the initial adjudication phase if such a meeting is prescribed by the Social Security Administration.

The Disability Examiners have developed a specialized medical expertise beyond that of the rehabilitation counselors of the State agencies.

Congress would regain control of the operation of a substantial part of the Disability Insurance Program currently being administered by the State Agencies. At present the only control mechanism is the approval of State Agency budgets.

The Committee Staff Report of July 1974 discusses this plan in more detail on Pages 18-21.

In Hearings before the Harrison Subcommittee in 1960 the AFL-CIO stated: " * * * that it seemed more important that the offices making determination be part of the same agency which has overall responsibility for administering the disability program, than for these officers to be part of the agency which is responsible for rehabilitation." (Committee Staff Study July 1974, p. 18)

Sixteen years later and after considerable experience with the Federal-State program, the AFL-CIO stated to this Subcommittee on Page 439 of the Hearing record of May-June 1976 the following: "Federalize the disability determination process, the law directs the Secretary of Health, Education and Welfare to enter into an agreement with each state authorizing an appropriate state agency to make determinations of disability for residents of the state. The present situation has inherent limitations for the Social Security Administration in terms of its capacity to coordinate and control state agency activities and administration. The agency has only limited authority to redetermine state decisions. *Some states apply eligibility standards stringently while others do not. Many states deny disability benefits to persons who would qualify in other states.* The state agencies also make decisions on hiring, overtime, salary levels and selection of administrations as well as other matters. It is difficult for the Social Security Administration to administer satisfactorily what it cannot effectively control." (Emphasis added.)

On September 26, 1975 the Subcommittee heard testimony regarding delays in Social Security appeals. Mr. Robert M. Ball, former Commissioner, Social Security Administration, testified: "For the long run, I believe the total disability process would be improved if the State disability units were to be made a part of the Federal Social Security Administration. Having the whole process of initial adjudication and reconsideration under a single direct line operation would help make for more uniform and consistent determinations in borderline cases at the first stage of adjudication. Also, the staffing pattern could be more flexible since it would not be necessary to staff according to state lines. Under a federal determination system, it would be easier to staff for face-to-face discussions between claimant and agency at the reconsideration level, a process that, *I believe, would result in fewer formal hearings.* Now many state agencies are located in just one place in a state and find the face-to-face interview difficult, if not impossible to arrange." (Emphasis added.) (See P. 110-111)

Mr. Ball on July 18, 1977 (almost 2 years later) testified at Hearings before the Subcommittee on the Disability Insurance Trust Fund, that the State Disability Determination Units should be federalized. During a colloquy with Congressman J. J. Pickle, a member of the subcommittee, he further explained and emphasized his reasons for such a recommendation.

It is interesting to note that Commissioner Cardwell of the Social Security Administration, at the hearings before this subcommittee in May-June 1976, made a statement quite similar to the AFL-CIO position referred to earlier, which is: "When the Congress mandated a Federal State mechanism for making disability decisions, certain inherent limitations were imposed on SSA in terms of its capacity to coordinate and control State agency direction. First of all, the Secretary's authority to redetermine decisions was limited. Redeterminations can only be made of allowance decisions and decisions as to the date that disability began; no redeterminations may be made of State agency denial decisions. *Also, under the adopted arrangements, the State agencies make decisions on hiring, overtime, salary levels, selection of administrators, and other related State prerogatives.*" (Emphasis added.) P. 278.

In the subcommittee Hearings held in September-October 1975, Mr. William A. Vollmer, Chief, Disability Determination Bureau, Rehabilitation Services Division, Helena, Montana had some very pertinent and timely statements regarding the Trust Fund program. These are:

"I appear here as an independent witness. I have no national affiliation with any group. I have been assured that I speak for many of the independents that are not affiliated.

"I am reminded of the notice on the corporation bulletin board which said: 'The objective of all dedicated company employees should be to thoroughly analyze all situations, anticipate all problems prior to their occurrence, and have answers to those problems when called upon.' However, when you are up to your neck in alligators, it is difficult to remember that your initial objective was to drain the swamp.

"I hope we can all agree that our initial objective in the administration of the disability programs under social security is to serve the claimants in the best manner we know how. This includes the quality and timeliness of disability decisions, the protection of his rights, and economical administration . . .

"Confusion exists in the minds of claimants from the very beginning of the application process in a district office. We have a super communication problem with the claimants and taxpayers we are serving. We have an even greater communication problem within the existing State-Federal structure of Bureau of Disability Insurance and the State DDS components.

"If you don't believe me, check the Survey of State Disability Agencies under the Social Security and SSI programs dated August 1, 1975. By federalizing DDS components and concentrating duties and responsibilities for disability development and adjudication, we would bridge many of the communication gaps. By closing these gaps, perhaps we would begin treating the cause of claimant dissatisfaction rather than treating the symptoms precipitated by the current system." (Emphasis added.) Pages 504-505.

DESCRIPTION OF FILING FOR DISABILITY BENEFITS

On October 3, 1975 Marie A. Clark, Supervisor, Disability Determination Services Cheyenne, Wyoming, appeared before this Subcommittee and stated:

"When an application for disability benefits is filed, the claim becomes enmeshed in an incredible administrative Ping-Pong game. To the federal SSA offices for filing. To the state agencies for development and determination. Back to the federal offices for notification and an explanation of what the state agency did. Reconsideration—initiated at federal level. Back to the state for redevelopment and redetermination. Notification goes back to the federal site—or is it the state, masquerading in federal stationery?"

"Claimants are understandably confused about where to seek help and advice in pursuing their disability claims. The program is federal. It follows that the field offices responsible for developing the disability claims and making the decisions should be federal, too." (Subcommittee Hearings, Sept. 1975, p. 447)

To give the subcommittee some idea of what Mrs. Clark is referring to we have attempted to briefly outline the process through which a disability claim must go. This outline is of necessity less than complete and no attempt has been made to deal with the many exceptional situations which arise, or the several procedures which are in the process of revision. Included is the role of the claims representative (SSA) and the disability examiner (State agency) as well as a brief look at the appeals process.

Processing the claim

Step 1.—An applicant goes to the local Social Security Administration District Office and files a formal application (either SSA-16 for Title II claim or SSI-8001 for a Title XVI claim) for benefits under the Social Security Disability Insurance Program.

The applicant is then interviewed by a Social Security Claims Representative where non-medical, vocational and medical information are taken (SSA-401).

The non-medical information includes proof of age, enrollment in Social Security Trust, dependents, salary, last time employed, onset of disability, income and resources for Title XVI.

The vocational information includes places of employment, type of work, length of employment.

The medical information includes Physician's name, address, telephone number, hospital stays, reasons for hospitalization, treatment received, medications.

If during the course of the initial interview the claim representative discovers that the applicant's work function changed because of the impairment yet the applicant retained a position, then a determination of "substantial gainful activity" must be made by the claims representative. A special SGA (form SSA-S21) must be completed with the information verified by employers and co-workers.

Note: During the initial phase, the claims representative can hold the claim if there exists a reasonable doubt as to the validity of the applicant's eligibility for the benefits. Upon satisfaction that the applicant meets the eligibility criteria the medical and vocational information is forwarded to the State Disability Determination Unit. In most cases a reasonable doubt of eligibility does not occur so the process is expedited somewhat.

Step 2.—A simultaneous case development and determination process begins. The claims representative (SAS) has retained the non-medical information so the amount of payment can be determined as well as eligibility criteria. Often an applicant's age must be verified.

Meanwhile the State Disability Examiner is developing the case along the lines of medical and vocational factors. Usually there is no vocational information and little medical information in the partial file received by the State Disability Determination Unit. This situation necessitates a telephone conversation or letter to the applicant asking further information about the medical history and vocational background. Note: The State employee often is represented as a Social Security Administration employee to avoid confusion on the part of the applicant.

Once the applicant has been contacted and the information gathered, the Disability Examiner must then contact the applicant's physician to obtain the needed medical evidence. The amount of processing time varies greatly depending on the information supplied by the Social Security District office and cooperation received from the applicant, the applicant's physician and other medical and vocational sources.

Step 3.—The actual determination of disability is made by the State agency involved. In cooperation with the State agency doctor the evidence is reviewed. Four decisions may be rendered.

1. There is sufficient evidence to support the claim and it is allowed.

2. There is sufficient evidence to support denial of the claim, thus the claim is denied.

3. A determination is made that the applicant has not cooperated to the fullest extent in obtaining the needed evidence, so the claim is denied on grounds of insufficient medical evidence.

4. A decision is reached that although the applicant has fully cooperated the medical evidence is insufficient for a final determination. In this case a medical examination is scheduled for the applicant by the State agency.

Concurrently the Social Security District Office has determined the applicant's eligibility status and the amount of the benefit payment.

Step 4.—The applicant is notified about the determination.

If the claim is allowed, the State Disability Determination Unit initiates the payment process in title XVI cases. In title II cases the Social Security District Office is advised and the payment is initiated in approximately 50 percent of the cases. The remaining cases are sent to the central office for processing of payment.

If the claim is denied, the State Disability Determination Unit advises the Social Security District Office and a form letter of denial and appeals procedure is generated by computer and sent to applicant; however, as is often the case, the computer will not generate the letter and the State agency sends the denial notice under Social Security letterhead.

A random sample of cases, both allowances and denials, is selected for post adjudicative review. Those cases that are Disability Insurance cases (title II only) are forwarded to Social Security Headquarters in Baltimore for review. Cases that are Supplemental Security Income cases (title XVI only) or dual claims (both title II and XVI) are sent to the Social Security Regional Office for review. If cases are deemed seriously deficient in either the national or regional office, they are returned to the State Disability Determination Unit for correction. Note: Weeks and months can go by during this review procedure, which may result in overpayment of claims; ultimately the situation is reversed.

In addition to the Federal review, each State agency has its own quality assurance section which reviews a sample of State disability determinations prior to payment input or clearance of the claim to the Social Security Administration.

The appeals process

This section describes the applicant's right to appeal and the process that takes place. This "due process" includes reconsideration of denial, hearing before an Administrative Law Judge, hearing by the Appeals Council.

Step 1.—If the initial determination of disability is unfavorable—that is, denied—the applicant can file a request (SSA-561) for a reconsideration of the decision. The Social Security District Office retains the folders of all applicants denied benefits by the State Disability Determination Unit for approximately nine months (the time required to complete the appeals process) unless, of course, the applicant's file has been selected for review and sent to Social Security Headquarters in Baltimore or the Social Security Regional Office (see above description of review process).

After receipt of the request for reconsideration the Social Security District Office forwards the folder back to the State Disability Determination Unit, where the case is re-examined by a different Disability Examiner and physician than made the original decision. Any new or additional medical evidence is considered if available. After thorough reconsideration, a second decision is made either allowing the claim or affirming the previous denial. If the case is allowed the file is returned to the Social Security District Office and the benefit payments are initiated, unless the folder is selected for sample review by the Social Security Headquarters in Baltimore or the Regional Office. If after reconsideration the case is again denied, the State Disability Determination Service notifies the applicant of the decision and further informs the applicant as to the right of appeal.

Step 2.—If the denial is upheld the applicant can file for a hearing of the case before an Administrative Law Judge of the Bureau of Hearings and Appeals or the phenomenon known as "informal remand" can occur.

An "informal remand" occurs after the reconsideration determination when the Social Security District Office, the Social Security Central Office, the Social Security Regional Office, the Bureau of Hearings and Appeals or the State Disability Determination Service find that the medical condition of the applicant has deteriorated or substantial new and additional medical evidence is received. Under this provision the case will be returned to the State Disability Determination Unit for development of the new medical evidence and re-evaluation of the applicant's case.

The Reconsideration Case may be re-opened where there is reasonable expectation that further development will result in an allowance decision. If the claim is allowed during 'informal remand,' the folder is forwarded to the District Office for benefit payment. If, after development, the claim is denied again, the State Disability Determination Unit notifies the applicant that the case has been forwarded to the Bureau of Hearings and Appeals to set a hearing date. Note: This notice is sent by State personnel on a Federal letterhead.

If the reopening of the Reconsideration Determination is unwarranted, then the file is forwarded to the Bureau of Hearings and Appeals immediately.

A reconsideration notice of denial may result in a hearing before an Administrative Law Judge. Further case development may be deemed necessary and undertaken by the staff of the ALJ without implementing the 'informal remand' process. Note: This development of new evidence results in the Administrative Law Judge functioning as a Disability Examiner, a position assumed where he is unqualified and untrained in disability determination.

An ALJ can reverse a prior determination and grant an allowance resulting in benefit payments or can affirm the denial. If denied the applicant then has 60 days to request review of the case by the Appeals Council.

Step 3.—Upon receipt of such a request the Appeals Council can remand the case to the ALJ for further development or undertake such new development itself. The Council may allow a claim resulting in benefit payments or deny the claim.

If the claim is denied then an applicant's final recourse is the U.S. District Court.

Precedents for federalization

H.R. 8076, 95th Congress, section 221 makes provision for the inclusion of the State Disability Determinations Units to become part of the Federal Government in the event of cancellation of the contracts between the Secretary of HEW and the 54 non-Federal agencies. It should be noted that there are precedents for such action:

"(1) Employees of the Senate and House of Representatives, who became subject to the civil service retirement system under the Act of July 13, 1937, and received full credit for all previous Congressional employee service;

"(2) Employees who work in the County Committee offices of the Agricultural Stabilization and Conservation Service (16 U.S.C. 590h (b)), who are not Federal employees but who were extended the benefits of the civil service retirement system under the Act of July 1, 1960 (Public Law 86-568; 74 Stat. 296); and

"(3) Employees of the U.S. Capitol Guide Service who, prior to the Legislative Reorganization Act of 1970, were independent individuals engaged in a public activity not subject to any laws relating to Federal employment. When the Capitol Guide Service was incorporated into the Legislative Branch by the provisions of Section 442 of the Legislative Reorganization Act (Public Law 91-510; 84 Stat. 1140), these individuals became employees of the Congress and received full credit for all previous recorded service for civil service retirement purposes.

"These three examples demonstrate that the policy of granting full retirement credit has been followed regardless of the number of employees involved or the pay system applicable to such employees. Only a handful of employees operate the Capitol Guide Service, while more than 15,000 people work in county ASCS offices. (House Report No. 94-461 Committee on Post Office and Civil Service, page 3 dated September 5, 1975.)"

In fact the similarity in positions of the National Guard and that of the State Disability Determination Units is quite striking. The Committee on Post Office and Civil Service in its report stated: "Prior to January 1, 1969, the technicians were not Federal employees, although their salaries were paid entirely by Federal funds. They served as employees of National Guard units under the command of the adjutant general of each state. In some states these employees were covered by the state retirement system, and after 1956, they were covered by Social Security. Their employment status remained subject to state law, however, and their prospects for retirement benefits varied according to the laws of 50 different states. Only 19 states actually extended retirement programs to technicians even though the provisions of Public Law 87-224 permitted the Federal Government to make some of the employer's contribution to state retirement systems."

The Congress took the action to federalize the National Guard less than 2 years ago in September 1975 and there were 27,960 Army National Guard Technicians plus 21,375 Air Force Technicians making a total of 48,541 technicians added to the Federal Government.

The total number of employees in the State Determination Disability Units is approximately 9500. As noted the Subcommittee is presently gathering data in its questionnaire of May 16, 1977 which will show the exact number of people in each State Unit now being paid with Federal Funds. Why should there be any further delay in making the Disability Insurance Trust Fund a completely federalized operation under the control of one entity? Beneficiaries, the disabled people of America who are paying for the program are entitled to and deserve recognition by making the system uniform whereby all are treated equally from coast to coast and not be judged as the AFL-CIO stated: "Some states apply eligibility standards stringently while others do not. Many States deny disability benefits to persons who would qualify in other states." (Page 439 Subcommittee Hearings May-June 1976.)

Mr. PICKLE. Do you have any additional statements or comments to make, Mr. Dean?

Mr. DEAN. No, Mr. Chairman. I am here to show my support as the new president-elect to Mr. Parsons and during my term of office, we will support the same issues that he has brought out.

Mr. PICKLE. You had asked, Mr. Parsons, that the additional views will be made a part of the record and that will be included in your broad statement

We thank you both very much for your testimony.

I wished to get in some questions. I have a lot of questions I would like to ask you. But, in order to maintain a schedule, there are a lot of people who have come from a lot of miles away and we must proceed and we will be back in touch with you.

Mr. PARSONS. We would ask that the record be help open for additional comments on other testimony.

Mr. PICKLE. We will set a time so that you will know how long it will be kept open.

Mr. PARSONS. Thank you very much.

[The following was submitted for the record:]

EMPIRE STATE ASSOCIATION OF DISABILITY EXAMINERS,

New York, N.Y., May 16, 1977.

Representative JAMES A. BURKE,

Chairman, Subcommittee on Social Security, Committee on Ways and Means, Washington, D.C.

DEAR CONGRESSMAN BURKE: The Empire State Association of Disability Examiners is the New York State chapter of the National Association of Disability Examiners, a professional division of the National Rehabilitation Association.

Our organization is comprised of professionals who are engaged in the documentation and evaluation of medical and vocational evidence in determining the eligibility of applicants for disability benefits under Title II and XVI of the Social Security Act, or who are engaged in administration, research, training, or study of the disability process. The opinions expressed in this letter are those of the members of the Empire State Association of Disability Examiners.

Because of the continued interest of your committee in making the Social Security Disability Program more responsive to the needs of the people, we respectfully present our views on some of the problems that exist in the administration of the program and offer what we believe to be a viable solution to many of them.

Under the current Social Security Disability Program, state agencies assume responsibility for the disability determination process under agreements with the United States Department of Health, Education, and Welfare, while the federal government is entirely responsible for the cost. In the initial stages of the program, the concept of state agencies adjudicating claims was sound, especially in view of the established relations with the medical community and the limited nature of the program. However, with the growth of the program, enactment of amendments, especially Title XVI, the resultant growth of both federal and state agency personnel, and increased awareness by the public of their rights as prescribed by law, the Federal-State system of operation has become cumbersome and has resulted in inadequate administration in some areas, lack of uniformity in applying regulations and guidelines of the Social Security Administration, and less than efficient service to the applicants. A report prepared by the staff of your committee, published in July 1974, notes that "the effort to achieve uniform application of the standards which determine disability is thwarted by a complex arrangement of relatively separate administrative entities". The report goes into detail on the State Agency operation and the Federal-State structure. It presents examples of the ways in which uniform application of the law is frustrated, including the use of Vocational and Medical experts. The report further goes on to cite variance in hiring standards for examiners, training, specialization of job functions, and other examples dealing with utilization of state agency personnel. The study of federalization of the State Disability Determination mechanism is widely discussed.

A General Accounting Office report release February 3, 1976 on State Agency operations deals with the lack of uniformity in the adjudication of disability claims, inadequacy of criteria and guidelines with resultant varied interpretation by state agencies, inconsistency in training programs, ineffective quality assurance activities, the effect of local politics and administrative changes on the stability and autonomy of the Disability Determination Unit, variance in hiring practices, lack of exchange of idea between one state and another which would improve the operation. State laws and practices control many administrative aspects of the program, including use of overtime, out of state travel, equipment justification, staffing ratios, salaries, and promotions.

The findings of the House Ways and Means Committee Staff Report and the GAO study are only some examples of the problems arising from the Federal-State mechanism. The effect of these problems on morale and consequently on the efficiency of personnel cannot be fully measured. We believe that a viable solution of these problems would be found in the federalization of the Disability Determination mechanism.

In three separate resolutions, the National Association of Disability Examiners endorsed the concept of Federalization of the State Disability Determination services with the rights of disability examiners safeguarded and the equity of the claimant protected.

Testimony to that effect was given before the Sub-Committee on Social Security of the House Ways and Means Committee on October 3, 1975 and June 4, 1976 by then Presidents of NADE Carthon P. Phillips and Lewis D. Buckingham, respectively. In the latter appearance, Mr. Buckingham noted that "as a professional organization, . . . the overwhelming majority of our members support federalization of the program as the only way to resolve the many discrepancies encountered in the administration of service to the applicants under the present system of having 54 separate entities".

The members of the Empire State Association of Disability Examiners are committed to providing the best possible service to the disabled claimants in New York State. We believe that this service is best provided if the rights of the disability examiners are safeguarded. We believe that federalization would

bring about a standardization of the State Disability Determination services which can never be achieved through the current Federal-State mechanism, and would assure a more equitable service to the disabled applicant. We believe that the system which may have been desirable in the initial stages of the program must now be adjusted to meet the challenge of changing times.

For these reasons, the members of the Empire State Association of Disability Examiners fully endorse the proposal embodied in the resolution overwhelmingly approved by the Delegate Assembly of the National Association of Disability Examiners in Hollywood, Florida on September 21, 1976: to endorse the transfer of State Agency personnel to the Social Security Administration as Federal Civil Service employees; and to recognize the National Guard Technicians' Act of 1968 as precedent for such a transfer.

If you should so desire, our Association is prepared to have a representative testify before your committee to provide further thoughts on this matter.

Your consideration of our comments is greatly appreciated.

Respectfully,

ANTHONY C. INNISS,
*President, Empire State Association of
Disability Examiners.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 25, 1977.

Hon. JAMES A. BURKE,
*Chairman, Subcommittee on Social Security, Committee on Ways and Means,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: As a co-sponsor of H.R. 7484, I would like to submit as testimony for your consideration a letter of inquiry I have sent to the Director of Social Service Disability Insurance. The inquiries and suggestions of reform are based on experiences and investigations of caseworkers in my district office in Eugene, Oregon. I have also attached a newspaper story on the plight of one of the cases referred to in the letter. Both are an indication of how serious the situation has become in Region X. The toll in unnecessary human suffering is dramatically mounting and I urge expeditious treatment of H.R. 7484.

Sincerely,

JIM WEAVER, *Member of Congress.*

Enclosures.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 25, 1977.

Mr. WILLIAM RIVERS,
*Director, Bureau of Disability Insurance, Dickinson Building,
Baltimore, Md.*

DEAR MR. RIVERS: As you may realize, I am a co-sponsor of H.R. 7484, the "Social Security Rights Act." The intent of this legislation is to expedite the processing of all Social Security benefit applications by imposing mandatory time limitations (copy attachment 1). The most obvious manifestation of the processing problem is at the Hearings level (83,217 pending cases with a median processing time of 214 days as of March 1977). Our plight here in Oregon is equally dire with a backlog of 190 cases here in the Eugene BHA office.

A poignant example of the hardship induced by this backlog is the case of Mr. Francis Alexander (attachment 2). Mr. Alexander filed for a hearing on January 3, 1977. His file, along with other backlog cases, was sent to Brentwood, Missouri in March—his hearing has not yet been scheduled. Mr. Alexander is diagnosed to have terminal, metastasized cancer and the hearing may well be heard posthumously.

Mr. Peter DeFazio of my Eugene district office staff has investigated the disability situation here in the 4th Congressional District. He indicates to me that a good part of the problem may be attributed to processing prior to hearing: i.e. at the district office and Bureau of Disability Determination level. He has presented me with some statistics and specific cases that I strongly want to call to your attention for substantive inquiry and reply.

Oregon has one of the lowest rates of approval for Social Security disability in the United States. In region X, Oregon has the lowest rate of approval, 32.9 percent, in contrast to a regional average of 39.2 percent and a Washington state average of 45 percent (attachment 3). In comparison, Oregon in 1974 and 1975 (latest available statistics, attachment), had the highest rate of industrial accident and illness in the western United States. With closer observation, Washington state varies less than 1 percent from Oregon for all categories of industrial illness and injury listed by the Department of Labor. Yet Washington has nearly a 13 percent higher rate of disability approval. I find this disparity extremely perplexing in light of the intent of Congress in mandating a uniform system of disability benefits under the enabling legislation.

I question whether the state agencies involved as sub-contractors to Social Security are equitably evaluating and processing disability cases under the standards—"Regulation No. 4, Subpart P, 'Rights and Benefits Based on Disability.'" If indeed the regulations are equitably and conscientiously applied, why do the statistics reflect this inordinate disparity?

I am gravely concerned with a number of cases processed as denials through the Oregon Bureau of Disability Determination that Mr. DeFazio has brought to my attention. In several of these instances the wage earners were denied although the evidence in file plainly indicated that they met, paralleled, or exceeded the medical listings. I enclose examples of two overt instances of negligence or oversight and list a number of other possibly questionable decisions. Mr. DeFazio has been involved to some extent in all of these cases. He has not had the opportunity to conduct an exhaustive review of evidence in file in most instances. However, he is a trained Rehabilitation Counselor and certainly as qualified in certain aspects of medical evaluation as the non-professionally trained Salem disability examiners.

Case 1 (attachment 5): Mr. Michael Andrews, SS No. 514-58-7684. Mr. Andrews met standards section 9.08 B.1, 4a, c from a letter in file previous to his denial. Mr. DeFazio traveled to Salem and asked to review the file which was then immediately approved sent to BDI as approved the next day.

Case 2 (attachment 6): Carl L. Hague, 58 years old, SS No. 519-12-7419, a laborer. Mr. Hague received his denial notice while comatose with multiple metastasized tumors. Please find attached a list of 16 other cases which have been brought to my attention as possible questionable decisions (attachment 7).

Although these cases do not constitute any significant percentage of the massive numbers of cases processed through BDD yearly, they at least demonstrate that a gross oversight was processed through BDI's system of checks, balances and quality control. An injustice was rendered to the claimant involved.

gendered by an inequitable system? I again point to the 13 percent approval. Are these cases indicative of an even greater mass of human suffering engendered by an inequitable system? I again point to the 13 percent approval differential between Washington and Oregon.

Here I introduce for your consideration the reversal rate statistics for Oregon and Washington at the hearing level—Oregon 52.7 percent, Washington 59 percent. If we assume that the state agencies involved in disability determination are doing a competent and consistent evaluation in a majority of cases, then the high reversal rate reflects problems at the initial application or reconsideration level.

Increasingly, claimants must resort to a hearing for justice. I understand that your office has recently increased the quota of cases per month to be processed by each Administrative Law Judge. Will the claimant now be denied review and justice at even this level?

Clearly, part of the problem is inherent in the process: application-denial-reconsideration-denial. As it is presently constituted, the applicants are denied face-to-face confrontation with anyone who has substantive influence over the determination of their case until the hearing level. All denials, requests for information and decisions below the hearing level are boilerplate and substantially uninformative. I suggest we eschew the subcontracting of disability determination to massive, impersonal, centralized state agencies and place disability determination personnel in each district office. This system would bring examiners closer to the applicants' sources of medical treatment and perhaps they might interview the applicants for disability benefits.

I want you to examine and respond to the disparities I have outlined herein. Thank you, in anticipation, for your prompt reply.

Sincerely,

JIM WEAVER.

Enclosures.

Attachment 1

[H.R. 7484, 95th Cong., 1st sess.]

A BILL To amend title II of the Social Security Act to require that procedures be established for the expedited replacement of undelivered benefit checks, to require that decisions on benefit claims be made within specified periods and to require that payment of benefits on approved claims begin promptly.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Social Security Rights Act".

EXPEDITED REPLACEMENT OF LOST, STOLEN, OR UNDELIVERED BENEFIT CHECKS

SEC. 2. (a) Section 205 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Expedited Replacement of Lost, Stolen, or Undelivered Benefit Checks

"(r) In any case in which the check issued to or for an individual in payment of any benefit due him or her under this title is lost or stolen or for any other reason has not reached him or her on the day regularly fixed for delivery of such check or within five days thereafter, such individual may submit to the Secretary a written request (in such manner and form as the Secretary shall prescribe in regulations) for the issuance of a new check in replacement thereof; and the Secretary shall take such action as may be necessary to assure that, within no more than ten days after such request is submitted, either (1) the replacement check is issued and delivered to such individual as requested or (2) a full and complete explanation of the reasons why the individual is not entitled to the check for which he or she has requested a replacement shall be furnished to the individual in writing."

(b) Section 205(q) of such Act is amended by adding at the end thereof the following new paragraph:

"(6) Nothing in this subsection shall require any individual to utilize the procedures established under paragraph (1) with respect to any allegation or claim, in lieu of the procedures established under subsection (r), if the allegation or claim is one to which subsection (r) is applicable."

TIME LIMITATIONS FOR DECISIONS ON BENEFIT CLAIMS AND FOR PAYMENT OF BENEFITS ON APPROVED CLAIMS

SEC. 3. Section 205(b) of the Social Security Act is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) (A) Subject to subparagraph (B)—

"(i) the decision of the Secretary as to the rights of any individual initially applying for a payment under this title shall be made within ninety days after application for such payment is filed;

"(ii) the decision of the Secretary on a reconsideration of any decision described in clause (i) shall be made within ninety days after application for such reconsideration is filed;

"(iii) the decision of the Secretary upon any hearing held with respect to any decision described in clause (i), whether affirming, modifying, or reversing such decision, shall be made within one hundred and twenty days after the request for such hearing is filed; and

"(iv) the decision of the Secretary upon any Appeals Council review held with respect to any decision described in clause (i), whether affirming, modifying, or reversing such decision, shall be made within one hundred and twenty days after the request for such a review is filed or after the Appeals Council itself makes a decision to review a decision.

"(B) If any decision with respect to the right of an individual to any monthly benefit under this title is not made within the period specified in the applicable clause of subparagraph (A), such individual shall upon request (and within

ten days of making such request) be paid an amount equal to such monthly benefit as determined solely on the basis of such individual's application and the applicable record of wages and self-employment income; and if such decision remains unmade at the end of any calendar month beginning after the close of such period, such individual shall upon request (and within ten days of making such request) be paid an additional amount equal to such benefit as so determined.

“(C) Amounts paid to an individual under subparagraph (B) shall in no event be considered overpayments for purposes of section 204.

“(3) Whenever an individual claim to monthly benefits under this title is approved, payment of such benefits shall begin no later than the day regularly fixed for delivery of benefit checks in the second month following the month in which the claim was approved. If the benefit check is not received by such individual on such day or within the succeeding five days thereafter, such individual shall upon request (and within ten days of making such request) be paid an amount equal to the monthly benefit so approved; and if the benefit check is not received by such individual on the day regularly fixed for delivery of checks in any subsequent months or within five days thereafter, such individual shall upon request (and within ten days of making such request) be paid an additional amount equal to the monthly benefit so approved.”.

EFFECTIVE DATES

SEC. 4. The amendments made by section 2 shall apply with respect to checks issued in payment of amounts due for months after the month in which this Act is enacted. The amendments made by section 3 shall apply with respect to applications (for payment or reconsideration) and requests (for hearings or appeals Council Review) made, and claims approved, on or after the date of the enactment of this Act.

Attachment 2

JACKSON COUNTY LEGAL SERVICES,
Medford, Oreg., June 30, 1977.

U.S. Congressman JIM WEAVER,
Longworth Building,
Washington, D.C.

DEAR CONGRESSMAN WEAVER: This is to solicit your help in bringing a client of mine, Mr. Francis Alexander, to a Social Security Disability Hearing.

I was notified on January 6, 1977 by the Bureau of Hearings and Appeals that my client was put on the calendar for said hearing. On April 21, 1977 I called the Bureau of Hearings and Appeals and was informed that, due to the case load in Oregon, a number of cases (including my client's) had been sent to Missouri to be processed and heard by the Administrative Law Judges from that state.

Congressman, Mr. Alexander has terminal cancer of the lungs which was diagnosed too late to be operable, and according to his doctor, he has a very limited time to live. If there is any way you can intervene to expedite this hearing process, I would greatly appreciate it.

Again I would like to express my deep appreciation for your attention to and concern for my previous letter.

Sincerely,

JACK H. BLANKENSHIP, *Paralegal.*

Attachment 3

601 STATE AGENCY DISABILITY AND SSI ALLOWED-DENIED RATES FOR 26 WK ENDING 3/77

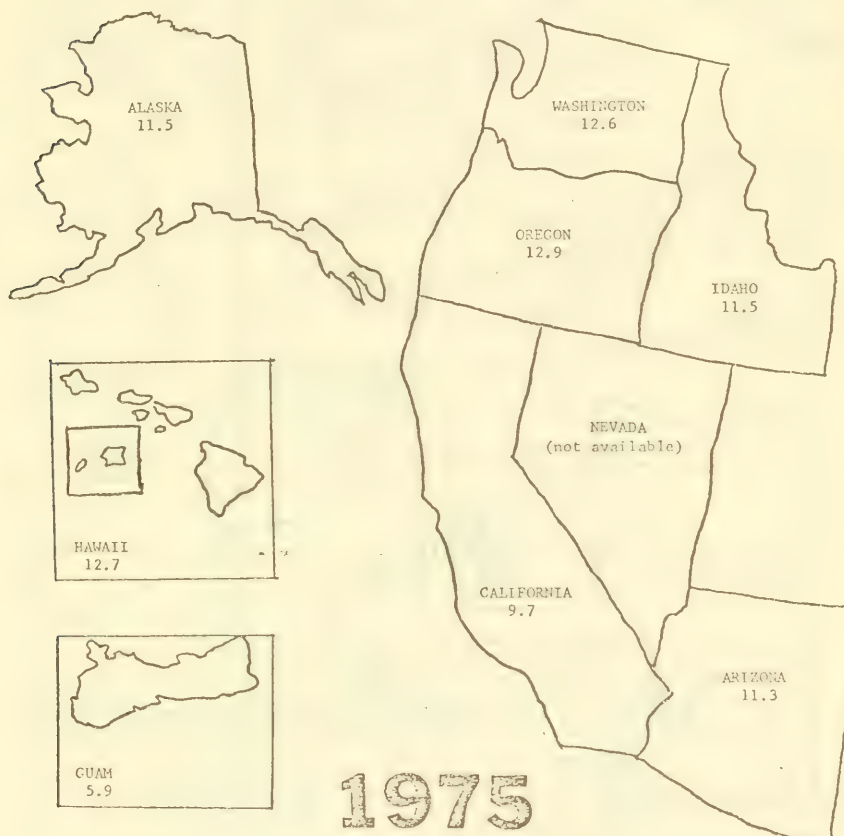
State agency	Disability insurance			Supplemental security income			Combined DI and SSI totals		
	Allowed	Percent allowed	Percent denied	Allowed	Percent allowed	Percent denied	Allowed	Percent allowed	Percent denied
DA region.....	33,753	39.3	52,150	25,141	37.6	41,780	58,899	38.5	93,930
Arkansas.....	3,788	31.3	8,302	2,837	32.8	3,876	6,623	31.8	14,178
Louisiana.....	7,482	42.0	10,312	6,995	37.1	11,358	14,457	39.8	21,850
Baton Rouge.....	2,510	48.0	2,943	2,576	41.8	3,817	5,086	43.7	6,560
Shreveport.....	2,032	35.6	3,670	1,966	30.3	4,324	3,998	32.8	8,203
New Orleans.....	2,920	44.2	3,690	2,453	41.5	3,397	3,373	43.1	7,087
New Mexico.....	1,604	32.4	2,574	1,725	36.0	2,283	2,869	37.3	4,857
Oklahoma.....	4,130	40.1	6,254	2,410	36.9	4,113	6,600	38.9	10,373
Texas.....	16,716	40.4	24,708	11,614	39.3	17,954	28,330	39.9	46,672
KC region.....	15,149	46.6	17,378	7,675	44.4	9,596	22,824	45.2	26,974
Iowa.....	3,439	50.0	3,452	1,653	53.3	1,449	5,112	51.0	4,907
Kansas.....	2,523	46.6	2,881	1,088	44.4	1,360	3,611	45.9	4,251
Missouri.....	7,502	44.3	3,441	4,238	41.6	5,953	11,740	43.3	15,394
Nebraska.....	1,665	51.2	1,588	596	45.5	834	2,361	49.4	2,422
Lincoln.....	364	52.4	376	388	50.3	384	1,352	51.8	1,260
Omaha.....	701	49.6	712	308	40.6	450	1,009	46.5	1,162
DE region.....	6,656	42.6	8,954	3,852	40.6	5,636	5,514	41.9	14,590
Colorado.....	3,115	42.9	4,143	1,978	40.5	2,909	5,093	41.9	7,052
Montana.....	282	40.4	1,271	452	36.9	773	1,314	39.1	2,044
North Dakota.....	537	40.8	780	270	32.2	436	807	39.9	1,216
South Dakota.....	628	44.3	284	542	52.0	500	1,230	47.4	1,364
Utah.....	1,130	45.2	1,338	495	39.3	747	1,625	43.8	2,085
Wyoming.....	324	36.7	558	121	30.9	271	445	34.9	829
SF region.....	40,922	41.9	56,832	31,816	39.4	48,933	72,738	40.7	105,771
Arizona.....	3,392	47.4	3,758	2,043	50.8	1,982	5,435	48.6	5,740
California.....	35,567	41.3	50,570	28,752	38.7	45,602	64,319	40.1	96,172
Oakland.....	6,712	48.3	7,052	5,729	43.1	7,578	12,441	46.0	14,630
East Los Angeles.....	4,593	38.6	8,958	5,150	38.1	8,373	11,409	38.4	18,331
West Los Angeles.....	6,259	30.6	10,441	4,139	27.5	10,909	8,732	29.0	21,350
San Diego.....	6,900	43.8	8,867	4,903	43.1	6,485	10,603	43.5	15,352
Sacramento.....	5,924	46.2	6,885	4,678	43.7	6,029	9,332	45.1	12,913
Fresno.....	5,179	41.3	7,367	4,153	40.0	6,272	9,302	40.7	13,586
Hawaii.....	254	44.9	1,048	448	48.7	512	1,302	45.5	1,560
Nevada.....	1,103	43.1	1,462	573	40.6	737	1,882	42.3	2,239
SE region.....	9,328	39.2	14,490	4,846	37.4	7,787	13,972	38.5	22,277
Alaska.....	247	43.3	324	162	41.3	234	415	42.7	558
Idaho.....	272	33.9	1,699	420	31.3	924	1,292	33.0	2,623
Oregon.....	2,969	32.9	6,067	1,274	30.4	2,916	4,243	32.1	8,983
Washington.....	5,232	45.0	6,400	2,784	42.3	3,713	8,022	44.2	10,113

Attachment 4

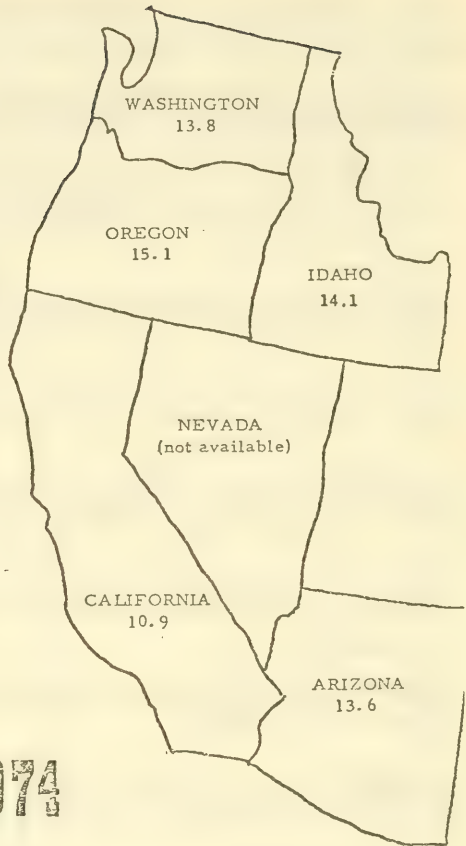
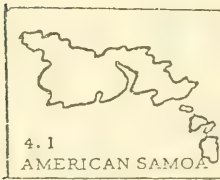
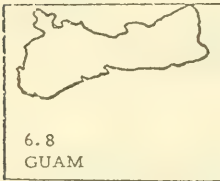
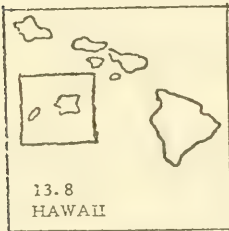
REGIONS IX AND X OCCUPATIONAL SAFETY AND HEALTH STATISTICS, 1975 AND 1974

Recordable Occupational Injury and Illness Incidence Rates for Comparable Industries, Private Sector, by Industry, by States in Regions IX and X, United States, 1975 and 1974

(Department of Labor, Bureau of Labor Statistics, San Francisco, Calif., December 1976)



OCCUPATIONAL SAFETY AND HEALTH STATISTICS
TOTAL RECORDABLE INJURIES AND ILLNESSES
BY
INCIDENT RATE
PRIVATE SECTOR
REGIONS IX AND X



1974

OCCUPATIONAL SAFETY & HEALTH STATISTI
TOTAL RECORDABLE INJURIES & ILLNESSE
BY
INCIDENT RATE
PRIVATE SECTOR
REGIONS IX & X

RECORDABLE OCCUPATIONAL INJURIES AND ILLNESSES INCIDENCE RATE¹ BY INDUSTRY, BY STATES IN REGIONS IX AND X, UNITED STATES, 1975, 1974
REGION X

	United States				Alaska				Idaho				Oregon				Washington			
	Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases	
	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974
Private sector ²	9.1	10.4	3.3	3.5	11.5	13.2	5.2	5.5	11.6	14.1	4.3	4.0	12.9	15.1	5.9	6.1	12.5	13.8	4.7	4.9
Agriculture.....	8.5	9.9	3.7	4.5	6.1	20.1	3.4	3.7	5.7	10.4	2.4	3.1	11.8	15.5	5.6	6.2	15.4	17.1	6.1	6.4
Mining.....	11.0	10.2	5.7	5.1	10.4	14.0	5.4	8.7	11.0	9.6	7.6	7.7	---	---	---	4.2	15.4	17.1	6.1	6.4
Contract construction.....	16.0	18.3	5.5	5.9	16.6	19.0	7.4	7.7	16.1	21.9	4.6	5.3	19.8	24.9	6.1	7.8	21.3	26.4	6.9	7.9
Manufacturing.....	13.0	14.6	4.5	4.7	24.0	31.2	11.3	12.6	20.8	26.2	8.1	8.0	21.0	23.4	9.9	10.4	18.2	20.1	7.5	7.8
Transportation.....	9.4	10.5	4.6	4.8	13.6	13.4	6.0	6.6	10.6	9.4	4.8	3.6	11.2	13.0	6.6	5.8	11.7	12.2	5.7	5.8
Trade, wholesale, retail.....	7.3	8.4	2.6	2.8	7.4	8.7	3.5	3.3	8.6	9.6	2.9	2.7	9.7	11.0	4.1	3.6	10.5	10.9	3.4	3.2
Finance, insurance, and real estate.....	2.2	2.4	0.8	1.2	1.4	1.4	1.5	1.5	1.8	1.8	1.1	1.5	2.9	3.1	1.0	0.9	2.7	2.8	0.8	0.9
Services.....	5.4	5.8	2.0	1.9	2.9	5.2	1.3	2.0	7.0	6.9	2.2	1.9	7.4	7.8	3.3	2.9	8.0	8.6	2.6	2.6
State and local government.....	---	---	---	---	5.9	---	3.0	---	---	---	---	---	8.6	---	3.4	---	7.3	---	4.7	---

See footnotes on next page.

RECORDABLE OCCUPATIONAL INJURIES AND ILLNESSES INCIDENCE RATE ¹ BY INDUSTRY, BY STATES IN REGIONS IX AND X, UNITED STATES, 1975, 1974—Continued

REGION IX

	American Samoa				Arizona				California				Guam				Hawaii				Nevada			
	Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases		Total recordable cases		Lost workday cases	
	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974	1975	1974
Private sector ²	6.9	4.6	3.9	3.5	11.1	13.6	3.8	4.0	9.7	10.9	3.9	4.1	5.9	6.8	3.3	3.5	12.7	13.8	6.4	6.5	(3)	(3)	(2)	(2)
Agriculture					12.6	11.5	4.3	3.7	11.3	12.1	4.6	5.2					18.8	21.6	8.8	8.5				
Mining					7.9	10.1	5.3	5.9	13.7	13.4	7.1	6.8					12.1	8.5	11.3	5.9				
Contract construction	6.5	4.8	5.2	3.8	23.7	26.4	7.3	7.3	18.2	21.2	6.9	8.1	12.3	13.1	6.1	6.1	32.3	35.5	17.0	17.5				
Manufacturing	13.6	7.8	7.3	7.3	13.4	15.9	4.5	4.6	13.0	14.5	5.1	5.1	7.3	7.3	3.4	4.0	14.2	16.6	6.1	6.2				
Transportation	4.1	7.6	3.2	3.3	11.0	12.5	4.4	4.9	10.5	11.2	5.5	5.5	5.9	6.3	3.7	3.7	13.3	14.3	8.0	7.4				
Trade, wholesale and retail	1.8	.6	1.0	.4	11.5	13.5	3.7	3.8	9.1	10.3	3.6	3.6	3.1	2.7	2.1	1.6	9.2	10.4	4.5	5.1				
Finance, insurance, and real estate					3.2	4.3	1.2	1.1	2.8	2.8	1.0	.9	.5		.3		2.9	4.1	1.5	1.7				
Services					7.7	9.5	2.4	2.6	6.4	6.9	2.6	2.5	2.9	2.4	2.1	1.4	9.4	9.4	4.2	4.3				
State and local government	2.7	3.5	2.4	2.7					9.6		5.4		1.7		1.1		11.8	10.5	6.3	5.7				

³ State data not available. State data will be available for 1976.

Note: Dashes indicate no data reported or data do not meet publication guidelines.

¹ Incident rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as (N/EH X 200,000).

² Private sector excludes railroad and mining. These exclusions were made to insure identical universe bases for both years. For 1975 in only 3 States would the private sector rate be changed by the inclusion of railroads and mining. They are: Idaho, total cases 11.5, lost workday cases 4.2; Washington, 12.6, 4.7; Arizona, 11.3, 3.7.

Attachment 5

MEDFORD, OREG. *June 30, 1977.*

Congressman JIM WEAVER
Eugene, Oreg.

DEAR MR. WEAVER: When I first contacted your office I was quite frustrated and upset at the way my disability claim was being handled. The determination board of Social Security had denied my claim for total disability even though my physicians had written letters stating what my disability was, and also that I was totally and completely disabled. One of their members had even written in my denial, that diabetes was not a disabling disease, and yet it is our country's third largest killer.

Until I put my claim in the hands of your staff, I had received a complete run around. The day I contacted your staff they started to work on my behalf.

I thank you and your staff for all your efforts and consideration.

Sincerely,

MICHAEL L. ANDREWS.

JOHN T. WEISEL, M.D. AND JOHN RETZLAFF, M.D., P.C.

MEDFORD, OREG., *June 15, 1977.*

Re Michael Andrews, Chart No. 3582
 VOCATIONAL REHABILITATION DIVISION
Salem, Oreg.

Gentlemen: Michael has advanced diabetic retinopathy with some macular edema and some proliferative disease. He has experienced gradually decreasing visual acuity over the past year and his most recent visual acuity measurements have varied from 20/50 to 20/100 in the right eye and from 20/50+ to 20/80 in the left eye.

Although he is having panretinal photocoagulation, the prognosis for either improvement of vision or preservation of the vision he has now is guarded.

In my opinion, Michael is economically blind, even though he does not qualify as being legally blind under the classical definition.

I hope this is the information you need. If you have further questions, please notify me.

Sincerely,

JOHN RETZLAFF, M.D.

MEDFORD CLINIC,
Medford, Oreg., May 4, 1977.

DON E. WOODARD, M.D., F.A.C.P.,
*Chief Medical Consultant,
 Disability Determination Services,
 Salem, Oreg.*

DEAR DOCTOR WOODARD: This 27 year old diabetic gentleman was seen at the request of Dr. Richard Hebert, concerning a 20 year history of insulin dependent diabetes. Findings on the physical examination showed rather extensive retinopathy with associated blurring visual symptoms. There were multiple "red dots and old scars present and exudates."

His history was consistent with a gastroenteropathy associated with his automatic insufficiency with his diabetic syndrome. He also had findings of a peripheral neuropathy. Most recent glucose studies on his usual dose of insulin included fasting of 162 mgs. percent, 12 pc of 148 mgs. percent, spilling 39 grams of protein on a 24 hour urine specimen.

Mr. Andrews has unequivocal diabetic retinopathy, probable nephropathy and neuropathy. I feel that he is completely and totally disabled by these on going problems which are now complicated by his gastroenterologic problems.

I hope this is the information that you seek.

Sincerely,

MALIA J. HART, *Secretary.*

Attachment 6

 DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 SOCIAL SECURITY ADMINISTRATION

 DISABILITY DETERMINATION
 AND TRANSMITTAL

 Form Approved,
 OMB No. 72R523

1 DESTINATION SA <input checked="" type="checkbox"/> BDI <input type="checkbox"/> CRS <input type="checkbox"/> DIO <input type="checkbox"/>		2 SA CODE 380	3 FILING DATE 02/28/77	4 SSN 519-12-7419
5 NAME AND ADDRESS OF CLAIMANT Carl L. Harue 80200 Lost Crk Rd Dexter Or 97431			6 WE'S NAME (If CDB or DWB Claim)	
9 DATE OF BIRTH 07/22/19			10 PRIOR ACTION <input type="checkbox"/> PD <input type="checkbox"/> PT	
12 DISTRICT-BRANCH OFFICE ADDRESS Bx 1337 Eugene Or 97401			13 DO-BO CODE 933	14 DATE 05/20/77
11 REMARKS PH: 503 937-2279. Concurrent SSI-Title II claim. See SSA-831 on Title II claim in field for SSI.				
7 TYPE CLAIM (Title II) DIB <input type="checkbox"/> FZ <input type="checkbox"/> DWB <input type="checkbox"/> COB-R <input type="checkbox"/> COB-D <input type="checkbox"/> RD-R <input type="checkbox"/> RD-D <input type="checkbox"/> RD <input type="checkbox"/> P-R <input type="checkbox"/> P-D <input type="checkbox"/>				
8 TYPE CLAIM (Title XVI) DI <input type="checkbox"/> DS <input type="checkbox"/> DC <input type="checkbox"/> BI <input type="checkbox"/> BS <input type="checkbox"/> RC <input type="checkbox"/>				
16 DIAGNOSIS 1. Undifferentiated carcinoma, right upper lobe of lung, post op thoracotomy on 02/02/77 2. Degenerative joint disease, lumbosacral and dorsal spine				
15 CLAIMANT DISABLED A <input type="checkbox"/> DISABILITY BEGAN _____ B <input type="checkbox"/> DISABILITY CEASED _____				
18 CASE OF BLINDNESS AS DEFINED IN SEC 1614(a)(2)(i)(v) A <input type="checkbox"/> NOT DISAB FOR CASH BENE PURP. B <input type="checkbox"/> DISAB FOR CASH BENE PURP BEG _____				
19 CLAIMANT NOT DISABLED				
A <input checked="" type="checkbox"/> THROUGH DATE OF CURRENT DETERMINATION B <input type="checkbox"/> THROUGH _____ C <input type="checkbox"/> BEFORE AGE 22 (CDB Only)				
20 VOCATIONAL BACKGROUND Laborer, general construction industry			OCC YRS. 9+	ED YRS. 8
21 VR ACTION SC IN A <input type="checkbox"/> SC OUT B <input checked="" type="checkbox"/> PREV REF. C <input type="checkbox"/>				
22 REG-BASIS CODE N36-901	23 MED LIST. NO.	24 MOB CODE G	25 REVISED DET. <input type="checkbox"/>	26 LIST NO.
27 RATIONALE				

See SSA 831 for DIB claim on SSN 519-12-7419

☐ SEE ATTACHED SSA-834

28		29 LTR/PAR NO.	
A <input type="checkbox"/> PERIOD OF DISABILITY	B <input type="checkbox"/> DISABILITY PERIOD	30 DISABILITY EXAMINER-SA Wiley T. Johnson	
C <input type="checkbox"/> ESTAB BEG _____ AND _____	D <input type="checkbox"/> CONTINUES	31 DATE 06/09/77	
F <input type="checkbox"/> NOT ESTABLISHED	E <input type="checkbox"/> TERM _____	32 REVIEW PHYSICIAN-SA [Signature]	
		33 DATE [Signature]	

34 REMARKS
[Signature]

35 BASIS CODE	36 REV DET CODES	37 SSA REPRESENTATIVE	SECTION	38 DATE

PATHOLOGICAL RECORD

Specimen No. 1 is a 215 gm. right upper lung lobe measuring 22 cm. in greatest dimension. On the posterolateral surface there is an umbilicated appearance and a firm tumor nodule measuring 3 x 2.3 x 2 cm. in dimensions. It is a multinodular tumor mass varying from grey-tan to yellow in coloration. Anterior and of a distance of at least 3 cm. from the main tumor mass are other subpleural firm tumorous nodules varying in size from 2 to 7 mm. There is prominent anthracosis and apparent fibrous scarring at the right lung apex. A section of the bronchial tree shows no evidence of tumor masses. A few black anthracotic parabronchial lymph nodes are found, the largest measuring 1.3 cm. Sections are embedded. Specimen No. 2 is multiple fragments of hilar lymph nodes which are entirely embedded. The largest measures 2.5 cm. Specimen No. 3 is three portions of mediastinal lymph node measuring up to 2 cm., which are entirely embedded. Rv

Microscopic sections of the large subpleural mass and the separate nodules show undifferentiated carcinoma showing marked nuclear enlargement and hyperchromatism and a high mitotic rate. There are some areas suggestive of glandular formation whereas other zones show a pavement like arrangement of cells demonstrating squamoid features. There is vascular lymphatic invasion and tumor is separated from the pleural surface by only a thin rim of fibrous stroma. There is fibrous scarring at the right lung apex and there is prominent anthracosis throughout. The proximal bronchial margin shows no evidence of tumor. Two parabronchial lymph nodes are seen, one of which is fragmented. There is prominent anthracosis and sinus histiocytosis. Focal metastatic undifferentiated carcinoma is seen in the fragmented node. The fragments of the designated hilar nodes show extensive replacement by metastatic undifferentiated carcinoma in fifteen fragments of node. Three portions of separate designated mediastinal nodes show reactive hyperplasia and anthracosis but no evidence of tumor.

Undifferentiated carcinoma, with extensive vascular lymphatic invasion, multiple subpleural nodules of right upper lung lobe: Metastatic undifferentiated carcinoma, sixteen of seventeen parabronchial and hilar lymph node fragments: Chronic lymphadenitis and anthracosis, three separate mediastinal lymph nodes.

Comment: The pattern of undifferentiated carcinoma does suggest focal areas of attempts at glandular formation and some areas of possible squamous features. The large tumor mass may represent a primary lung tumor. However, a metastatic process cannot be excluded. Rr

_____, M.D.

CONSULTATION SHEET

Case code: 01.

Name: Carl L. Hague. AN: 519-12-7419.

AOD: 01-11-77. QCR: Unk. Age: 58. Major Voc: Laborer-Custodian.

A—Allegations: 1. Lung Ca. 2. Back 3.

S—Symptoms: Back pain-admitted-tumor on chest X-ray.

S—Signs: RV Lobectomy-path rpt: Undifferentiated carcinoma tumor w "extensive vascular lymphatic invasion, multiple subpleural nodules of R.V. L."

A—Analysis: Extensive, but no definite evidence excision incomplete—doesn't seem to meet other 13.13 subcategories. Probable "E3" denial?

"Extensive degen. joint disease changes in back"—above spino fusion. "Evidently" joint disease in knee, total resection of CA. Can't return to medium work with a lot of bending.

Attachment 7

541-28-4008—Helen J. Miller.

562-24-3546—Alice M. Padgett.

540-18-5459—Tom E. Riley.

507-07-8231—Willis M. Drew.

553-40-8878—John Natho.

541-30-1126—James E. Perdue.

497-32-9182—Davis Chase.

367-38-0199—David R. Tice.

94-441 O—pt. 2-77—15

502-01-8780—Edmund F. Boehrs.
 520-16-0976—Thomas Elliott.
 555-22-1012—Frank L. Mehuron.
 546-40-8998—Lillian Richie.
 446-26-7075—Ronald G. Knight
 517-16-6247—Floris Cremarosa.
 560-52-3073—Lonnie Moore.
 544-38-3298—Addie Sizemore.

STATEMENT OF THE NATIONAL EASTER SEAL SOCIETY FOR CRIPPLED CHILDREN
AND ADULTS

This statement expresses the views of the National Easter Seal Society for Crippled Children and Adults on issues related to the disability insurance program and your bill, H.R. 8076. We respectfully request that this statement be inserted in the current hearing record regarding the social security program.

There are a number of issues that concern us about the present disability insurance program. Our concerns are reflective of our role as a provider of rehabilitation services to the disabled and as an advocate for those with disabilities. First, we are generally concerned about a number of limitations in the current disability insurance program which are disincentives to employment of disabled people. We share the concern expressed by you in your floor remarks regarding H.R. 8076 on this point. We are also concerned about the inadequate health insurance coverage for disabled individuals under Medicare.

With regard to work incentives, the current law automatically excludes a disabled person from Title II disability insurance coverage if that person earns \$230 a month or more. We understand that the \$200 limit has recently been officially raised to \$230. For a severely disabled person, benefits under Title II and related benefits under Medicare, SSI, and Medicaid will often substantially exceed this amount. The expenses of a severely handicapped person, such as a paraplegic or quadriplegic, may range from \$4,000 to \$10,000 annually. These expenses are generally paid for by the Government.

The "Comprehensive Needs Study", funded by HEW (HEW Contract 100-74-0309, June 23, 1975), estimated that gross earnings would have to be almost \$18,000 in order to meet the costs now currently covered by the Government (page 663). Under Title II, however, a person loses all his benefits when he earns more than \$2760 per year. It is therefore not economically sound to return to work unless one makes enough to cover all the benefits presently covered, including income support.

In computing earnings, Title II permits the disabled to deduct expenses resulting from the disability which are directly connected with work. These "work connected" expenses have traditionally been defined very narrowly. If an expense is essential for a disabled person to live independently at home, with freedom to work, rather than in a residential institution, the expense would not be treated as work connected. Attendant care is an example of this kind of an expense which is essential to some severely disabled but which Title II will not presently treat as work connected. Attendant care includes assistance in dressing, managing difficult physical tasks in the household, getting in and out of a wheelchair if one is quadriplegic, etc. This care may cost between \$4,000 and \$6,000 a year. It is essential if one desires to live independently and if one wants to work. Other similar expenses which Title II would not treat as work connected would be repairs to devices necessary to mobility or other physical function, such as wheelchairs, or the initial cost of such devices if not covered by health insurance. Without such devices, function necessary to work is impossible. Obviously these services assist in enabling function related to activities of daily life other than work; but, the fact both may be involved should not preclude treating such expenses as work connected for purposes of computing allowable earnings.

We would recommend permitting the disabled to deduct all expenses necessary to independent function and also work connected so long as the expenses were attributable to the disability. With this deduction permitted, severely disabled people could profitably work and earn the \$230 per month the law allows since they could also earn enough to cover their basic expenses directly related to their disability. A change of this nature has been suggested in two recent studies of disability, the HEW "Comprehensive Service Needs Study" cited

previously and a recent paper submitted for the record written by Carl Granger, M.D., of Tufts University Medical School entitled "Who is Severely Disabled?". Both studies indicate that under Title II there is a disincentive not to work. Permitting income used to pay for all expenses directly related to the disability which are necessary to restore independent function to be excluded from the Title II computation of earnings would meet this problem.

We would also recommend under Title II raising the permissible monthly earnings and extending the trial work period. Your bill, H.R. 8076, deals with both of these issues and we applaud your efforts. We think that allowing a disabled person full earnings during a trial period of 18 months prior to termination or suspension of benefits is preferable to the two stage 24 month provision in H.R. 8076, but both are improvements over present law.

We would also suggest, as another work incentive for Title II, raising the level of permissible monthly earnings from \$230 to \$300 per month. The increase in the length of the trial work period would increase the ability of a disabled person to determine whether he can undertake substantial employment activity and establish his productivity, and to determine if his economic needs could be met through employment if benefits were to cease. The increase in permissible earnings simply enables the disabled to meet economic demands more adequately than under the present system.

Another area of the current law which needs to be modified is health care coverage of the disabled. A disabled person needs, in particular, a medical rehabilitation program at a time early in the course of disability in order to reduce the effects of the disability. The costs of such programs can be substantial and are often not covered by private insurance policies, which generally have limited coverage in rehabilitative care. Under present law, the disabled are covered under Medicare. However, Medicare coverage does not begin until the individual has been entitled to cash benefits under Title II of the Act for 24 consecutive months. Since cash benefits are not paid under Title II until the individual has been suffering under a disability for 5 consecutive months, there is a minimum of 29 months between the onset of disability and the beginning of Medicare entitlement. Also, if a disabled person earns more than \$230 a month and therefore loses his Title II coverage, Medicare coverage is lost and the waiting period must be endured a second time if the disabled person's earnings eventually drop below \$230 a month and he or she again becomes "disabled" under Title II.

The benefits of medical rehabilitation have been well established. A recent HEW study done by the Rehabilitation Services Administration establishes that a spinal cord injured person who enters a comprehensive rehabilitation program soon after his or her disability has a 75% chance of being able to work again. And yet, these benefits of reduced dependency cannot be realized without adequate health insurance to finance necessary care and rehabilitation. Currently, too many of the disabled have no medical coverage for this purpose. Therefore, we urge the Committee to extend Medicare coverage to disabled persons as soon as they are determined to meet the medical definition of disability.

We would also recommend complete elimination of the second waiting period as your bill, H.R. 8076, provides.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 22, 1977.

HON. JAMES A. BURKE,

Chairman, Social Security Subcommittee, Ways and Means Committee of the House, Washington, D.C.

DEAR CHAIRMAN BURKE: One of my constituents, Mr. Morris Nebb, has brought to my attention the fact that present criteria for determining eligibility for disability benefits under the Social Security Act often results in the denial of such benefits to certain mentally-retarded persons, with unfortunate social as well as financial consequences.

Since your Subcommittee is now holding hearings on proposed changes in the Social Security Act with respect to disability benefits, I would greatly appreciate

your Subcommittee's consideration of Mr. Nebb's views, as set forth in the enclosed paper, and their inclusion in the hearings record.

Thank you very much for your courtesy and consideration.

Sincerely,

ELIZABETH HOLTZMAN,
Member of Congress.

Enclosure.

STATEMENT OF MORRIS NEBB, B.S., M.S.W., C.S.W., BROOKLYN, N.Y.

INEQUITIES AGAINST LOW-MODERATE-TO-MODERATE RANGE RETARDATES IN THE SOCIAL SECURITY, SUPPLEMENTAL SECURITY INCOME, AND DISABILITY BENEFIT LAWS, AS PRESENTLY WRITTEN; SUGGESTIONS FOR ALLEVIATION

Every day, low-moderate to moderate-range retardates are being denied their Social Security Disability Benefits and their Disability Status, for their lifetimes, because they have held a job. Not only is the loss in Benefits income to the family considerable (up to \$500/mo.) but there are other equally deleterious financial, social and legal consequences.

The Social Security Disability Laws contain built-in biases against the rights of the population described. These biases flow from: (1) a lack of understanding of the particular and distinctive disability of such a retardate which encompasses permanent deficits in fundamental life-preserving skills; this results in: (2) expectations in the Laws, both written and inferred, which are beyond the performance capacity of the retardate, when considered in his own right.

We note that such retardates (IQ under 70) are eligible for admission to State Schools for the Retarded because of these very deficits; in that environment, behind walls which preclude the possibility of his being a taxpayer to the extent of his capacity, rather than a permanent tax-user, the Social Security Agency will not hesitate to restore Benefit rights to him.

The Disability Laws are geared mainly to the intellectually normal worker populations characteristics. Benefits are paid during a period of reversible illness or handicap; they are withdrawn when the individual has recovered from his illness, or adapted to his handicap (ex. the Legal Counsel for one of the State agencies has no hands). In contrast, the retardate's intellectual disability is irreversible; his sense of values falls within narrow boundaries of what is real, practical or useful in his view as against a universe of what is abstract and therefore cannot be learned by him.

For this retarded worker, holding a job connotes successful achievement of peer superiority and personal adequacy; he holds the highest, most laudable rank in the "pecking order" he has observed and been motivated with during his Sheltered Workshop training. Such a worker's paycheck is also "certificate of merit" which regularly assures the retardate of his ability to operate in the domain of the intellectual normal, and of his (to him) equality with them.

Because of his intellectual deficiency, he has no awareness of, or interest in the economic power of his paycheck in terms of the items or services it can purchase and the needs it can satisfy. The paycheck is even more abstract than the coins and paper money he also does not know how to deal with as to values, transactions, change-making, etc. This whole most-important area of survival-coping is beyond him. These differences in job holding values and in the off-job vital deficiencies mark the permanent differentiation between the normal worker and the intellectually disabled one. It is his intellectual "blindness" whether at home or on a job which necessitate life long services of a "guide"; in the form of a devoted parent or guardian.

The Laws use two broad criteria against which initiation and subsequent continued eligibility for benefits is evaluated: namely, the Disability Definition and the "capacity for Substantial Gainful Activity" (SGA) concepts as detailed in various sections of the Laws. Both these criteria are completely job-oriented and job-related.

Such vital matters as the degree of off-job personal services essential to help the retardate get to the job and to keep him functioning on it, are not considered by the Laws though they are the heart of the retardate's disability. Also, many provisions are vague and lend themselves to varying interpretations by individual workers, supervisors, offices and districts. In various states there are intervening agencies such as New York State Disability Determination Unit whose function it is to expedite processing and weeding out of ineligible cases. In that agency we

have found completely differing opinions at high administrative levels as to basic evaluation criteria. An example of the Social Security Laws' unrealistic, outdated and subjectivity-oriented criteria may be found in Par. 621 of the current Social Security Handbook used by all levels of staff. This states that as little as \$90 per month in earnings may indicate capacity for SGA; "over \$140 per month will ordinarily demonstrate an individual's ability to engage in SGA." Interspersed are indefinite, high-sounding generalizations to consider "all circumstances" but the invitation to reject or disqualify is obvious.

The particular misapprehension with respect to retardates seems to be that with the advent of the simplest job, which he may hold for 9 months (or less depending on Social Security Agency personnel's judgment) the retardate is able to cope not only with job duties but with off-job-hours self-care, management, and community interrelating needs as well. He is declared "not handicapped" by Social Security Disability standards, and his Benefit payments cease. The illogic of such negative thinking and action by the agency is illustrated by the fact that before the adult retardate in this IQ range (or even higher) has held a job, the Social Security Agency has no doubt about his being handicapped. They recognize that he is in need of extensive personal services and supervision by parent or guardian; the latter is entitled to an "in-her care" allowance for such services rendered by her to or in behalf of the retardate.

When the retardate gets a job (generally one to which he is referred by his Sheltered Workshop, and frequently the only one he will have in his lifetime), the personal services he needs in order to function do not decrease; quite the contrary the services and responsibilities become much more onerous for the parent. Supervision, direction, and aid have to be rendered at a distance during the working part of the day, and he has to be prepared for the next day's work and situations he may encounter each day, in advance. Services to the retardate engaged in real work include new supportive areas and teaching duties for the parent or guardian. The retardate's absorption of these new coping skills is fractured and minute. Hence, he will never be able to sustain himself in the community without the services of the parent regardless of the length of job tenure. Finally, the employed or once-employed retardate is an adult in his own right. His parent or guardian should not be considered to be, in effect, a part of his functioning apparatus. She was not so considered before the retardate went to work.

This leaves us with the fact that in the case of the retardate, his "capacity for SGA" results from services rendered by others; this is exactly the opposite of the Social Security Laws' concept that capacity to manage one's own affairs and needs flows from work (or SGA) capacity. This being the case, findings of ineligibility for Benefits based purely on superficial, glib "capacity for SGA" is outrageous. The retardate by himself will never be within the self-care range subsumed under "normalacy" and necessary to survival. He will never be able to manage and resolve the (to him) insurmountable problems which the normal overcomes many times over, daily, as a matter of course; for example, the problem of a hole in the pocket; realization of it; comprehension of the reason for eliminating it; alternatives and methodology for doing so; moderating a headache; selecting appropriate clothing based on presentability, suitability for job and weather.

His ignorance as to avenues to pursue and techniques to follow in searching for work; his proneness to discrimination due to appearance, speech peculiarities or other stigmata; his residuality as a prospective employee; his dispensability at times of layoff because of his single low, marginal and unimprovable skill portrays an individual more entitled to Disability Benefits than the intellectual normal who is eligible by regulation for Disability Benefits he "has long-time work experience limited to arduous, unskilled,—labor, little education—a significant impairment and—has not demonstrated ability to do lighter work" (Par. 609 of the Operations Handbook).

We have presented a picture of a retardate who under present laws is adjudged ineligible for his lifetime for Disability Benefits based on his intellectual disablement. The injustice does not stop with this. For example, eligibility for Supplemental Security Income is determined by the identical criteria used for evaluation for Social Security Disability benefits; namely the Disability Definition and the SGA provisos. His ineligibility for one form of benefit automatically ensures his being ineligible for the other.

Social Security Disability findings are the authority used by many agencies in evaluating their clientele. As a result, the retardate finds himself rejected for services he should be entitled to, for the expectations of these agencies in turn

will also be beyond his capacity to fulfill. The result is a "never-never" land in which the handicap may continue to be recognized but not "honored." The retardate remains with his stigma, but is a target for deprivation of his rights because of the Social Security Administration's finding.

In her turn, the retardate's parent or guardian is penalized for her efforts to inculcate maximum socialization and functioning capacities in him. Financially, the family has lost the regular, frequently large (see Par. 1, Page 1) income which may well have been the keystone for the family's planning future for themselves and the retardate. The retardate, the parent or guardian, the entire family find themselves in a "Catch-22" predicament of rejection and deprivation due to an unjust decision arrived at because of the untrue model envisioned by the Laws.

At times, Social Security staff bluntly advise the parent who is applying for Disability Benefits or SSI for a retardate, that she should not permit the retardate to work since it will result in loss of Benefits and Disability Status. To protect the rights of this entire vulnerable and misunderstood population such gratuitous cautions, and beneficences are not a substitute for correction via written policy and implementing procedures. We would suggest changes in the Social Security Laws, and in Department mandate, with specific explication of areas such as the following:

1. The assembling of clear, documented identifying criteria (ex. areas and degrees of self-care deficits in relation to self-management capacity) which would delineate this segment of the population. This identification should include prognoses confirming that further education or training would not appreciably upgrade the retardate's work-skill or self-care capability skill levels.

2. Recognition that it is only simple justice that these first-fired, last-hired individuals of "last-resort" placeability should never lose their Disabled status. Instead, they should be continuously eligible for payments during periods of unemployment (as is current Social Security Law with regard to Blind persons age 55 and over); with a scale of deductions from Disability grant for income from employment (as is the case with retired workers over 62).

3. Continuation of "in-her-care," benefits to the parent or guardian so that there may be encouragement and incentive, rather than fear or inhibition, in exposing the retardate to work experience which will simultaneously:

- (a) enrich and render more meaningful his own life, and his contributions to intra-familial and community relationships; and,

- (b) convert the retardate from his present permanent tax-user status to one of productive tax-contributing participation in the work mainstream.

A final thought: work, in the case of the low-moderate range retardate, should be regarded as his most valuable life-environment, education-for-socialization, maturational experience. This kind of growth, which enables the retardate to operate at maximum capacity will prepare him for the adaptations to surroundings and relationships which he will of necessity be making during his lifetime. As a maximally socialized individual, acculturated to the society to the extent of his capability, the money cost of "guiding" him in living skills and needs for his normal life span will be minimal: i.e., foster home in the city where work opportunities may become available, as against lifelong care behind institutional walls at maximum financial and social cost.

This goal, however, creates a dilemma in decision-making in behalf of the mentally retarded adult by his concerned, knowledgeable parent (or guardian): (a) should the financial security of the recurring SSI (or derivative Disability Benefits) grant, with its accompanying recognition of disability status rights, be retained to the detriment of the handicapped person's growth; or, (b) should the parent or guardian opt for maximum growth thru' exposure to life experiences via (at best) uncertain job tenures or tenuous labormarkets, which will deprive the individual of the rights and financial "rewards" accompanying Social Security Disability Status. There will be no need for choice, no punishment for attempted fulfillment of capacity if the basic inequities I have outlined are corrected as above.

STATEMENT OF JO MARY MCCORMICK-SAKURAI, NEW YORK, N.Y.

DISABILITY

Request dropping the "currently insured" disability requirement.

The present requirement states that the worker must be determined disabled and be "currently insured."

This means he must have worked five (5) out of the last ten (10) years before he became disabled or twenty (20) out of the last forty (40) quarters.

Some disabled workers despite diminished capacities keep making many work attempts and recuperating, changing vocations to fit diminished abilities, undergoing training, living on savings, struggling to readjust thereby going past their "currently insured" years. Furthermore, many workers, including myself, are not aware of this "currently insured" threat to our security. The partially disabled but unemployable—by diminished capacities—sinks into lower wage scales, accidents when attempting different kinds of work, humiliating defeats when changed vocations fail, loss of confidence and despair. By then the worker has gone past his "currently insured" years. This worker is not totally disabled, yet unable to work as normally, or at all. Because he was not totally disabled he did not apply sooner. By the time he has gone through all the above trauma, work efforts, re-training and living under great hardships unwilling to accept Welfare, the worker is a candidate for psychiatric care due to depression, anxiety, stress, despair and hopelessness. But having gone past his "currently insured" years, Social Security turns its back on the worker mercilessly.

Why should workers who are fully insured, having worked for 40 quarters in their lifetime, or more, be denied disability coverage? Should not a worker who has worked ten (10) years at least be entitled to benefits when disabled?

Thus the required quarters for retirement would be the same number of quarters, forty (40) for disability, regardless of when the disability was sought.

At present the disabled worker who applies late, can be deprived of the Social Security Disability benefit because he is not "currently insured" even though he may have (as I have) worked over 26 years and be fully insured for normal retirement, with well over 80 quarters in the record. Yet, I am being denied disability benefits on the score of not being "currently insured."

Strangely, persons who have never worked can obtain Supplemental Security Insurance (SSI) when disabled or over 65, regardless of when they became disabled. Shall the disabled worker or partially disabled worker, have *less* benefits, consideration or mercy than those who did not work? Most workers would prefer Soc. Sec. rather than S.S.I.

Soc. Sec. form letters say they take age into consideration. Yet, I'm 59, only three years from early retirement. Still my disability case has been prosecuted as though I were a criminal.

Shabby treatment of the worker reveals one basic cause why many Welfare recipients will not work. They know from the experiences of their families, relatives, friends that the worker is shabbily treated. They can observe former workers disabled or unemployed at the same Welfare centers where they are receiving the same humiliations. If, on the other hand, the Welfare recipients observed former workers to have advantages over the non-worker it could be a powerful incentive to the non-worker to try work for a change.

DEPRECIATION AND DISABILITY (EXHIBITS A AND B)

Congress allows business to make deductions on office equipment, machines, furniture and fixtures "as a legitimate cost of doing business."

Humans also depreciate "as a legitimate cost of doing business," and allowances should be made for those who are seeking benefits due to disability.

While many over 65 are eager to continue working and earning there are other human beings whose health is already failing at 55 who may not live to reach 62 or 65.

Couldn't the disabled, especially those who have long work records—and especially those going back to the post-depression in 1936-37, when work conditions were far harder, longer, and poorer paying—be recognized as depreciating and allowed some aid? Besides working under primitive conditions in some cases, I paid for my own education in music, art, plus eight (8) years going to Columbia University nights while working full time under harsh conditions as I also supported a shut-in mother (all three at the same time: (1) full time work, (2) college, and (3) care of a semi-invalid.

One suggestion for calculating depreciation: For every four years of work add one year to worker's age, or for every five years of work add one year to worker's age. Thus I, a disabled worker—whose disability may not be almost total—who worked over 26 years divided by 5 would gain 5-plus years onto my present age of 59, which would make the age 64-plus. Then with less harsh and merciless tests for disability, as they exist today, I could be considered 64-plus and apply for normal retirement.

Certainly it is inhumane to continue the exceedingly harsh disability criteria for workers when SSI recipients, who never worked, are rewarded for (1) being poor, 65 or disabled, and (2) not having worked (such as alcoholics and addicts). The military is less harsh than So. Sec. Disability as it allows, for example, 30 percent disability for asthma.

In 1942, I gave up the finest job I ever had to help the war effort (W.W. II). I was working at the Lotos Club—like a University club—except devoted to the fine arts and music. As buses were carrying posters saying hospitals were in special need of help, I left to work at the New York Hospital in Administration (Information Desk) nights and also to harvest apples for the Women's Land Army Corps War Food Administration. In 1945, I volunteered for the WACS and WAVES but with the stipulation I would only serve to release a man for medic purposes not killing. I was rejected by both services. When examined by the WACS I was the only one of my group of ladies who was sent to have heart X-rays. I also took a test for Junior Air Craft Communicator. Despite a very high score, near 100, I was never called. In my day, there was no "Equal Opportunity Employer." I am half Japanese and never received any opportunities job-wise in my life.

Besides no "Equal Opportunity Employers" in my productive years, there was no "Keogh Plan" to help us provide for ourselves; there was no "Supplemental Security Income" so that my mother who lived to be 83, had only \$65 a month Social Security to live on, plus my support. That \$65 a month was on her own earnings record. She worked all her life till her heart gave out. My father dropped dead at work, and was not included in Soc. Sec. then; there was no "School financial Aid" as there is now and I paid all costs, except two tiny grants, myself; there was no Medicaid, Food Stamps, etc.

I have a long work record. I was patriotic and offered myself to my country. I work to improve my community and society, never smoked, nor drank, lived a cloistered exemplary life, supported a shut-in mother 16 years and help my neighbors. Yet, Social Security says persons like me are not worth anything, but Welfare is good enough for us. I think former tax payers and Social Security payers deserve something a little better than Welfare when disabled. And also not to be treated like cheats.

What shall I (at 59) and others like me do until we reach 62 or 65, when we cannot accept Welfare? Soc. Sec. help is imperative. I am planning vocational re-training but it will not be enough probably to fully support me.

EXHIBIT C

One other point. It is extremely cruel to insist that older persons be forced to compete in today's jobs market because age itself is a disability. Also our pathetic attempts lead to harm. In 1975, I was attempting to act as an artist's representative, not my usual work which was editing and writing. As I hurried to keep an appointment I fell and broke my arm (the head of the humerus). I was under great stress fleeing from the wolf at my heels. As I'm totally alone I have no way to share or dissipate my anxiety. Had my head instead of arm struck the curb I would be dead, doubtless. Despite the shock and pain, when a Federal postman was willing to help me on to my appointment I kept on even with "blood on my forehead." Later, I went to the hospital. The point of mentioning this is that is what being work-oriented means. People with this kind of determination can never be malingerers. There must also be such a thing as psychic, physical and emotional exhaustion. Recently, a helicopter fell off the Pan Am Building in New York. Daily News headlines, May 18, 1977, reported: Metal Fatigue Blamed in Crash—Tragedy Blamed on Metal Fatigue.

This is my plea that people be allowed depreciation—when disabled—according to years worked. Or else discontinue the privilege of depreciation to business as unfair. And "currently insured" requirement be dropped.

EXHIBIT A

MIDDLE-AGED, JOBLESS, DESPAIRING

(By Pat Watters)

ATLANTA.—Two years ago, I read an anguished article by a man describing what it was like for him to be jobless at 52 and unable to find work. I felt total

sympathy. Back then, I was starting a book about angry middle-aged men, drawing on my own and others' experience of joblessness.

Recently, I was flying home from the last stop of a month-long tour promoting that book, and read another terrible account, this by the son of middle-aged parents who for two years hadn't been able to get a job. Again I was deeply moved, this time nagged by the same sense of frustration I had felt throughout the tour.

At each stop, I had heard horror stories: People told about their own ordeals of joblessness at middle age, or about those of a father or uncle or, often, a mother or aunt. The stories were about people of all races and classes. For women, minorities, the poor, the problem is only more acute.

I felt confirmed in my belief that widespread unemployment—and underemployment—at middle age is one of this country's most serious social problems. And I kept thinking, why isn't somebody doing something about it?

The shattering effect on individual lives is cause enough for action. Alcoholism. Depression. Mental illness. Suicide. Even for those who overcome or avoid these and eventually find work again, the experience takes its toll.

Some, despite heroic effort, can't pull out. A woman told about her husband: "He was just 50, and he was so worried, and he worked so hard trying to find another job. Now he's dead. A massive heart attack, last week. He died of a broken heart."

As if humanitarian motives weren't enough, another compelling reason for action to alleviate joblessness at middle age is the effect it is having on the morale of many Americans. Many of the victims are terribly bitter, totally disillusioned. Here are excerpts from letters I've received:

"I gave my all to the job, put my girls through college, paid my taxes faithfully, ushered at church, never joined a swingers' club. And yet one cold day I learned that I had passed the line of no return. This wasn't the way the system worked, I thought. Qualified people can always get a job. But no."

"We are a society ruled by bureaucrats (business, government, schools), by exploiters (both material and human), by thieves (get it any way you can, but get it)."

"Broke, disabled and desperate, only my wife's job saved me. . . . What is the answer? Read the book, "With Fidel."

The compelling reasons for action are there. Yet none is taken. The problem of joblessness at middle age has been acknowledged for years—but that is with a strange resignation, as though it were something, like cancer, that happens to many unfortunate people but about which nothing can be done.

Something, of course, can be done. The Government or private institutions could hold a national fact-finding conference to determine the full extent of the problem and its causes. Experts in economic, psychology and other appropriate fields could be in touch with victims to seek solutions.

Tenacious causes lie in employers' attitudes, such as the unspoken policy, widely prevalent, that human beings become obsolete sometime between the ages of 35 and 65. "They scrap you and buy themselves a new model," as one man put it. "A high-energy, low-cost new model."

Appropriate agencies could start educational programs aimed at employers to change this and other fallacious attitudes, pointing out the economic as well as human waste, with the country losing the effectiveness of people in their prime.

The Government could take a direct hand. Jimmy Carter's statesmanship in leading Georgia away from racism was more than a matter merely of persuading the ordinary people. He also knew how to talk to the powerful in the state, tell them the practicalities of what had to be done. He and his Federal Administration could, in the same way, tell those with the power of hiring and firing that they must act to resolve the national crisis of middle-aged Americans out of work.

Crisis is not too strong a word. The stability of our business-centered, job-oriented society is threatened. The message to middle-aged jobless people—and to all those coming along behind them—is that the premises of the work ethic, the promises of the system just don't hold any more.

EXHIBIT B

In the case of *Shimp v. N.J. Bell Telephone* Judge Cruccio judged as follows: " . . . Human beings are also very sensitive. . . . Unlike a piece of machinery, the damage to a human is all too often irreparable. If a circuit or wiring goes bad, the company can install a replacement part. It is not so simple in the case of a human lung, eye or heart. The parts are hard to come by, if indeed, they can be found at all. . . .

"A company which has demonstrated such concern for its mechanical components should have at least as much concern for its human beings. . . ." N.J. 368 Atlantic Reporter, 2d Series.

EXHIBIT C

To Whom It May Concern:

In the early evening, a little after 5 pm, as I was walking north on Third Avenue and 43rd Street, I happened to see this lady seem to trip or skid, try to right herself as she was falling with such speed and force that she landed at my feet at the curb like a football tackler hurtling through the air. Luckily her outstretched arm broke the violent fall before she hit the curb with her forehead. Several people ran to help her to get up also especially because it was the height of the rush hour and she was lying in the path of traffic. Some woman came forward with her glasses which had flown off her face a good distance up onto the sidewalk.

The lady sat dazed and didn't want anyone to touch her. When we told her she had to move she let us help her up saying, "Please don't anybody touch my arm." There was a telephone booth at that corner and I asked her if I should get an ambulance. She didn't know. She was dazed, confused, in pain she said but worried about an appointment she had to keep. Finally, she said all right call the ambulance. I did. Then she asked if I might help her to walk over to Fifth Avenue and carry the big package she had fallen with as she couldn't carry it anymore. I said I would. Then she said she had to keep that appointment as she desperately needed the money she hoped to get there. We walked crosstown. She seemed dazed, distressed, frightened, worried and shocked or confused. But she was determined to get to that appointment.

When we arrived at the offices on Fifth Avenue where she had the appointment which was a law firm and got into the light I saw that she had blood on her forehead which she hadn't seemed to notice only that her arm hurt her and she held it all the time. I hadn't noticed the blood before as it was dark outside or perhaps it had been bleeding as we walked.

We met a Chinese man there who she said was the artist she was to meet and two lawyers came out to look at the package I was carrying for her which turned out to be a painting. The Chinese artist then showed several other paintings he brought. The lawyers looked at them and admired them, but didn't want any of them. They said they would let her know. She said she was greatly disappointed. She said she would manage to get home herself and said she would go to the hospital near where she lived. The Chinese artist carried all the paintings and the one I had previously carried for Miss McCormick.

FRANCIS J. MILLER, Jr.

JAMAICA, N.Y., July 19, 1977.

HON. JAMES A. BURKE,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BURKE: In connection with your Subcommittee's review of the present Social Security system, I thought you might be interested in a concrete example of the inequities of that system.

My father-in-law, John O'Neill, of 22 Stearns Street, Malden, Massachusetts, has been a diligent and productive member of the work force for more than 40 years. After his medical discharge from the Navy in 1944 because of ulcers, Mr. O'Neill took up his father's trade, that of a skilled hardwood finisher. He worked for the nationally famous firm of Irving and Casson of Cambridge until 1970, when the firm went into bankruptcy.

It was far from easy for Mr. O'Neill, the father of eight, to acquire new employment at the age of 53, but he was determined not to be a burden on either his family or the community. He was finally successful in obtaining a position as a maintenance worker for the United States Postal System. While the job was not in his usual line, it was honest work and no one could have been happier than Mr. O'Neill. But, as I am sure you are well aware, employees of the Postal Service are not covered by Social Security, and therein lies the rub.

Slightly more than five years after entering upon his new employment, Mr. O'Neill suffered the first of several heart attacks. Between December 1976 and the present, he has been hospitalized four times and is now recuperating from

pacemaker implant surgery at the Massachusetts General Hospital. He has been declared totally disabled by the Postal Service. Mr. O'Neill has been forced to face the fact that he can never again engage in regular employment of any kind.

The irony, as it turns out, is that this man who was so determined not to be a welfare burden is likely to become just that because of the gaps in the present system. Under the law, Mr. O'Neill is not entitled to any Social Security disability benefits, since he has not worked in a job covered by Social Security during the past five years. On the other hand, because he has only worked for the Postal System for slightly more than five years, his Civil Service disability benefit amounts to the meager sum of \$20 per week, obviously insufficient to support a wife and three children still living at home.

When one reads daily in the newspapers about system rip-offs, it is hard to understand how there can be so much fat for the dishonest to steal and so little to help the very people which the system was designed to assist in the first place. I hope that your Committee can do something to correct such unfairness. You, of course, have my permission to include this letter in the record of the Subcommittee's hearing, if you deem it appropriate.

Thank you for your attention.

Respectfully yours,

JOSEPH P. ZAMMIT,
Associate Professor of Law.

Mr. PICKLE. Now, we will have a panel of the Association of Administrative Law Judges, from HEW. I will now call Judge Robert Murdock, from Roanoke, Va., and Judge John Sweeney, representing the Association of Temporary Administrative Law Judges.

We welcome you. We are glad to have both of you here and you may proceed.

PANEL CONSISTING OF ROBERT B. MURDOCK, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, HEW, AND JOHN T. SWEENEY, PRESIDENT, ASSOCIATION OF TEMPORARY ADMINISTRATIVE LAW JUDGES

STATEMENT OF ROBERT B. MURDOCK

Mr. MURDOCK. Mr. Chairman, I am taking the place of our president, Robert Hawthorne, who went into the hospital Tuesday. He seems to be doing all right from what I have found out just recently. I would appreciate it if you could make my statement a part of the record in this hearing.

Mr. PICKLE. I have your statement and it will be made a part of the record and I assume your statement is the same general statement that would have been offered by the other gentleman?

Mr. MURDOCK. Yes, sir.

I would like to just briefly make a statement about the bills.

In referring to the bills, while the association is mindful of the significant differences arising within the language of the bills, we are cognizant of the fact that various regulations as well as sections of the Social Security Act, as amended, are not totally responsive to the changing needs of the people. Without becoming too specific, the association endorses many of the provisions of each of the proposed bills, such as the concept of informal prehearing stage conferences—

Mr. PICKLE. Did you say you did not recommend any of them?

Mr. MURDOCK. No, sir, I said we do endorse many of the provisions of the bills, such as the concept of informal prehearing stage conferences between the claimants and representatives of HEW, the practice of

conducting adversary proceedings at the hearing stage, the concept of continuing flexibility in applying broad disability standards so as to fully appraise the impairments of the respective claimants, and parity of pay for all Federal administrative law judges.

I would be glad to answer any questions you may have.

[The prepared statement follows:]

STATEMENT OF THE ASSOCIATION OF ADMINISTRATIVE LAW JUDGES IN
THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and members of the subcommittee, my name is Robert B. Murock. I am an Administrative Law Judge with the Bureau of Hearings and Appeals of the Social Security Administration, Department of Health, Education, and Welfare. I represent the Association of Administrative Law Judges in the Department of Health, Education, and Welfare, who are appointed pursuant to Section 3105 of Title V of the United States Code.

I appreciate the opportunity to present this statement from a background of experience as an Administrative Law Judge for 15 years.

Let me say initially that the Association of Administrative Law Judges is dedicated to perpetuation of a professional corps of Administrative Law Judges who preside over cases assigned by the Secretary of HEW. Because of the unique character of the Bureau and its mission, the Association of Administrative Law Judges is concerned primarily with adherence to the strict standards set down by the Administrative Procedure Act to ensure a fair and impartial hearing to all claimants. Although we Administrative Law Judges are naturally concerned about our own personal welfare, I sincerely believe that any selfish interest in this particular matter has been subordinated to the overall best interests of the claimant and individual citizen whom both of us seek to serve. Federal Administrative Law Judges are, in effect, the United States District Court Judges for the administrative agencies.

Before you for consideration are the merits of the following Bills: H. R. 8076; H. R. 5064; H. R. 4646; H. R. 5072; and H. R. 5656. While the Association is mindful of the significant differences arising within the language of these proposed bills, we are cognizant of the fact that various regulations as well as sections of the Social Security Act, as amended, are not totally responsive to the changing needs of the people. Without becoming too specific, the Association endorses many of the provisions of each of these proposed bills: such as: the concept of "informal" pre-hearing stage conferences between claimants and representatives of HEW; the practice of conducting adversary proceedings at the hearing stage; the concept of continuing flexibility in applying broad disability standards so as to fully appraise the impairments of the respective claimants; and parity of pay for all Federal Administrative Law Judges, among others. The Association has carefully evaluated the economic considerations involved in the implementation of these proposed bills, and believes that any additional financial costs required to administer these changes are warranted in view of the enormous social and judicial benefits derived from the enactment of these programs.

One of the overlying considerations in each of these proposed bills is the concept of elevating the Social Security judges to a grade consistent with their level of responsibility and authority. The Administrative Law Judges are presently classified and compensated under the General Schedule of Civil Service pay grades, even though their position is obviously not suited to this career ladder concept.

Particular attention is called to the fact that these judges are the only career employees exempt from agency pay and job classification, performance ratings and quality pay increases. For these reasons, it is clearly appropriate that the salary of these judges, like those of other federal judges, be set by separate statute rather than under a schedule of career ladder pay grades.

The Administrative Law Judges are now classified at the GS-15 or GS-16 level, depending upon the Civil Service Commission's "evaluation" of the level of the cases they handle. The difference in compensation is not justified on any rational basis, it merely creates an artificial distinction which is not realistic, efficient or equitable. All APA judges must possess the same basic qualifications. Indeed, the costs involved in transferring GS-15 judges to fill GS-16 vacancies in other agencies and the consequent loss of continuity of agency programs more than offset any saving in the pay differential among judges.

When an ALJ moves from one rate making agency to another rate making agency, or from HEW to a rate making agency, he is making a horizontal move from the standpoint of legal expertise. Each position has its own different types of work, but each does not require a different degree of legal ability.

It is clear that determinations in DHEW are as difficult and elusive as any adjudications in the federal system. The legal complexity and economic impact of these decisions are equal to or greater than that of ALJ's in any other agency. The fact that Bureau counsel does not appear in Social Security cases has been recognized by Congress as materially increasing the responsibility and work of the Administrative Law Judge (Horsky Report pg. 335).

The comparability of the work is so well known that there is no purpose in laboring the point. The Director of the Civil Service Commission's Office of Administrative Law Judges has written that "the functions of the administrative law judge are substantially the same throughout the government even though the subject matter of the cases they hear varies greatly." ("Development of the Personnel Program for Administrative Law Judges," *Administrative Law Review*, Winter 1973, Vol. 25, No. 1, at p. 42.

As stated by one District Judge, "to particularize that a certain human being with individualistic impairment and limitation may or may not have employment opportunity in a certain area . . . may require an elite group of soothsayers superbly trained to probe the many intangibles" (*Stoliaroff v. Ribicoff* (1961), 198 F. Supp. 587, 591, cited p. 6. Report). Prof. William D. Popkin, of the Indiana University Law School, recently stated in an address before the ABA: "The delicate role of investigating and judging medical evidence as it relates to economic disability calls for extreme sensitivity to the complex role that the judge must play, and requires considerable skills in cross examination."

The multiplicity of statutes and regulations in varying fields, which the ALJ must consider, is staggering—Title II, Title XVIII, the Federal Coal Mine Health and Safety Act (Black Lung), Title XVI, the Civil Rights Act of 1964, and a host of state laws in the fields of domestic relations, contracts, corporate law, conflicts of law, etc., involving marriage, divorce, abandonment, annulment, adoption, business transfers, etc.

The economic impact of these decisions is enormous. Millions of dollars are involved in the Civil Rights cases, which are vigorously contested by able counsel from the Office of Education and state educational systems, and which involve potential denial of federal benefits. Each disability determination is of monumental importance to the claimant and his family. The average actuarial value of an ALJ reversal of an Administration denial of disability benefits, i.e., a grant of such benefits by the ALJ, is about \$54,000 over the lifetime of the recipient. (Memorandum from Lawrence Alpern, Deputy Chief Actuary, May 28, 1974, attachment to "Social Security Draft Report, Civil Service Committee for the Study of the Effective Utilization of Administrative Law Judges", by Hon. Melford O. Cleveland, Administrative Law Judge (herein "CSC Study—SSA Draft Report"). This is a potential of 18 million dollars per year per judge. The Federal Administrative Law Judges Conference has recommended that all ALJ's—including those in SSA—should have a separate salary classification, without in-grade step differentials, and that this should be set at 90 percent of the pay level of the U.S. District Court judges, or a salary substantially equivalent to that level. In support of this recommendation, the FALJ resolution states:

"The administrative law judges have long felt that their inclusion within the established Civil Service regimen of salary structuring is unsatisfactory, that the compensation therein provided is both inadequate and inequitable as related to their judicial positions, and that correction of these defects would greatly enhance the recruitment of highly qualified candidates for these positions, especially from private bar and judiciary. In addition, the separate pay classifications of the administrative law judges creates needless competition and turnover among judges who are drawn to higher-paying judgeships in other agencies. Inter-agency transfers based solely, or primarily, upon pay considerations obviously work an adverse impact on the continuity of agency programs.

Prof. Popkin viewed the large turnover in the Department of Health, Education and Welfare corps with disapproval: "If ALJ's seek jobs in the regulatory agencies to improve their status," Prof. Popkin writes, "they are likely to leave the Social Security Administration just when they are acquiring the necessary expertise."

What Prof. Popkin feared has actually been taking place. In slightly less than three years, from January 1, 1971 through November 27, 1973, 47 ALJ's in SSA

were recruited by other agencies, 44 of them paying at the GS-16 rate. During the same period, 111 ALJs in SSA were temporarily loaned to other agencies to handle 121 cases. The classification of some of this work was GS-16, some was GS-15, and some was unclassified (CSC Study, p. 68). In one of the CSC Study Committees, a suggestion was made that the Social Security Administration was a good place to recruit ALJs since "their track record could be studied". One ALJ from another agency stated that the reason for the refusal to reclassify SSA's ALJs, as follows: "We could not recruit from you if you were 16s like the rest of us" (CSC Study—SSA Draft Report, p. 20).

The Social Security Administration, with the concurrence of the Civil Service Commission appears content to use SSA as the training ground and as a pool of ALJs in the event of emergencies in other agencies. Further, in order to accomplish these purposes, SSA and CSC have suppressed the wage level of the ALJs in SSA. Aside from the gross inequity to the ALJs, we doubt that Congress intends social security taxes to be used for the recruitment, schooling, and on-the-job training necessary to accomplish such purposes unrelated to the Social Security Act.

The ALJ is the decision maker for the average American taxpayer who has a vested insurance right, a legal right, to funds in the Social Security system which is maintained by American workers who pay the highest taxes of the entire population. There are no deductions from Social Security taxation by those subject to its provisions—it is paid based on gross earnings and there are no exemptions until the maximum is paid. There is no question that litigation by these wage earner holders of vested rights would require the full constitutional safeguards and protection of the Federal Courts.

The ALJ relieves the regular Federal Court system from thousands of adjudicatory hearings and rulings in technical issues of medicine, vocational rehabilitation, labor economics, etc. under the complex Social Security insurance program.

A taxpayer is entitled to more than a fair hearing and an independent judge. He is entitled to the very best the government can supply. Since Social Security claimants are individual citizens, unorganized and sometimes uneducated, their right to have their case heard by a fully independent Administrative Law Judge, duly qualified under the Administrative Procedure Act, could be compromised or perhaps denied without the protest one would ordinarily expect from well organized and financed corporate interests faced with the same prospect. But these citizens deserve just as fair a hearing, with administrative law judges just as qualified as any corporation, and it is felt that Congress will see to it that they have no less. The administrative law judges in the Department of Health, Education and Welfare deal in human rights rather than corporate rights. In this time when we are concerned about human rights abroad, we should be even more concerned about human rights at home.

The legislation before us today, Mr. Chairman, would recognize the unique status of Administrative Law Judges within the Federal Civil Service Commission as accorded them by regulation, and by placing them in an appropriate salary category. These actions recognize the essential identity of functions and requirement of due process rights among judges in both the administrative and constitutional judicial systems of our country.

There is ample precedent for Congressional rejection of inequitable pay evaluations for APA Judges. I submit that, in the adjudication of safety and health protection, employment rights, and other employee benefits which Congress finds to require an APA hearing, it must be clear that the individual Americans who depend on the justice of those hearings are entitled to no less than the same level of maturity and qualifications of the judge as that of judges who hear corporate cases. Equal justice and fair treatment for all parties before the administrative agencies requires no less.

Mr. PICKLE. Let's ask Mr. Sweeney if he would go ahead and make his statement.

STATEMENT OF JOHN T. SWEENEY

Mr. SWEENEY. Thank you, Mr. Chairman.

I have submitted no previous statement for what I think are fairly good reasons. In trying to prepare something for you, I realized im-

mediately that to do so I would merely be reviewing the very excellent documents of your own staff for the last 2½ years.

Frankly, the report that follows Public Law 94-202 and the subsequent studies that have been made by the staff have said it all with respect to my purpose for being here today, as well as that which is the concern of House bill 5723 as submitted by Congressman Burke and 70 other Congressmen.

Basically, I am here because I represent the 170 men and women who, quite frankly, in the next few weeks or next few months will either have to resign or be terminated by operation of law.

There are very, very good reasons why House bill 5723 ought to pass and I might just tick them off very quickly, if I might.

Mr. PICKLE. Just to update me, why would they be required to retire?

Mr. SWEENEY. Public Law 94-202 put a date of December 1978 on the appointment of the temporary judges.

The people who were appointed under that law gave up permanent positions in order to accept the temporary positions and by action of law that job would end at that time.

Mr. PICKLE. In December of 1978?

Mr. SWEENEY. Yes, sir.

The reasons I would like to tick off briefly, Mr. Chairman, are these: First of all, with the addition of the 180-odd temporary administrative law judges this has been the most successful year the Bureau of Hearings and Appeals has ever had in attempting to attack the backlog.

We have gone from 120,000 cases down to 80,000 cases and we have upped the per-judge average of cases heard from something in the vicinity of 18 per man to almost 29 at the present time.

Second, Mr. Chairman, the proposition that was mentioned here previously about equal pay for equal work is true in this instance.

Our people have been working for 2 years hearing the exact same cases, doing the exact same work on a temporary basis and also for one grade lower in pay.

Third, Mr. Chairman, the temporary status of our jobs very seriously affects and hurts and interferes with the independence that was promised by the Administrative Procedures Act.

I don't mean to suggest that we, on a daily basis, are being harassed by the administration or by lawyers to whom we may have to go for vouchering some time in the future, but that threat is always there.

I must tell you that it is of some concern, particularly if you believe or anyone believes that the independence of the APA must be preserved.

Fourth, Mr. Chairman, there is an increasing caseload at the same time that there is a decreasing register of the availability of judges and a continuing problem of my colleagues who might possibly resign as a result of the point I previously raised.

Fifth, the anticipated retirement of many ALJ's now estimated at 20 percent of the present corps may be able to retire or will retire in the next 14 months. There is also the possible effect of a recent

U.S. district court decision out of Chicago which would seem to suggest that by January 1979 all cases must be heard and decided within 90 days or else.

I must say that this particular case is rather narrow at this time, but the rationale behind that decision, Mr. Chairman, is very clear and certainly applies to all of the hearings being heard under the Social Security Administration.

Last, there is the clear possibility in the Midwest, Mr. Chairman, of a class action suit that may be filed, which would overturn thousands of cases heard by those administrative law judges who have not been certified by the Civil Service Commission.

This would result in millions of dollars in either rehearing the cases, or in the serious loss of those cases that were overturned or affirmed by the administrative law judges.

Last, the fairness question again, Mr. Chairman, and that is the issue as to whether our individuals who gave up permanent positions for temporary jobs really ought to have to suffer this kind of ignominy.

Presently, House 5723 is in two committees, your subcommittee, Mr. Chairman, as well as the Subcommittee on Ethics and Utilization out of Post Office and Civil Service.

The chairwoman of that subcommittee asked the Civil Service Commission and the Department of HEW to come up with a compromise.

The Department of HEW agreed and they submitted a compromise. While it was not totally acceptable to our members, it was a fair way to implement what Public Law 94-202 intended to do for people who have been on the job for 3 years.

Civil Service has rejected this compromise out of hand totally and completely—and has refused to provide any kind of administrative relief along the lines asked for in your report and in Public Law 94-202.

Mr. Chairman, this whole question now is in limbo and apparently so are the bills.

I can only say it raises this question at least to my membership, and I am not happy to raise it in this way, but the question that is raised to us is this: Does Congress make the laws for the Civil Service Commission to implement, or does Civil Service Commission make the rules that Congress has to legislate to correct.

I am sorry to say that I think that it is fairly clear that our problem is such now that only Congress can assist us in overcoming what I think is, and I speak for my membership, a very, very difficult situation for professional men and women who have been working at the same job for the last 3 years.

Thank you.

Mr. PICKLE. I thank both of you gentlemen.

First, I thought you were here to testify either for or against 8076, but you have a more overriding interest in another bill.

Mr. SWEENEY. I should have made that point, Mr. Chairman. But, that is also on our minds, yes, sir.

Mr. PICKLE. As you know, Mr. Burke has introduced a measure that would convert these temporaries to permanents.

I wish Mr. Burke could be here today to comment, but as you know he cannot be, because of health reasons.

We are glad to have your views on these bills and the other two that you mentioned. I will see that both statements are made a part of the record.

Whatever is done will be done in conformity or in consonance with the Civil Service Commission. The Post Office and Civil Service Committee would also have to coordinate. While this is not a pressing matter, I think you will see some action on this relatively soon.

Mr. SWEENEY. We do have a position on these bills, but our association has been spending so much time in trying to solve our very serious professional problem, that we really haven't had the chance to submit it to you.

Mr. PICKLE. I would hope that you, as an active practitioner of these hearing examiners, would give us some comments on the bill, H.R. 8076.

Mr. SWEENEY. Talking about the definition?

Mr. PICKLE. Is there any aspect of the bill you care to comment on?

Mr. SWEENEY. I have to admit with respect to the testimony I have heard this morning and what I have read, I am personally, and not for the association, in agreement that the present definition of disability works well.

I say that mostly because I think there is a wide latitude given to the administrative law judges in determining the case for the administration by affirmation, or in reversing for the individual based on the wide latitude that we have at the present time.

I can appreciate that there are a lot of reversals. I can understand the administration's concern that there is considerably more money being paid out of the system and out of the fund.

But, from my own point of view, these are people's programs; they were passed by the Congress for the purpose of assisting people, and I think that in the cases where there is enough evidence that would seem to indicate that an individual should be paid because of the case he has presented and because it is a close enough case, and because in fact he has made a good case in appearing before the administrative law judge, I think many of us are finding in the claimant's favor, and I believe rightly so because I believe that is the purpose of the program.

I would have to say I frankly would be satisfied presently with the disability definitions.

Mr. PICKLE. Again, I thank both of you gentlemen for appearing. Your testimony will be very helpful to the committee.

Mr. SWEENEY. Thank you, Mr. Chairman.

Mr. PICKLE. I am now going to call a recess of the subcommittee until 2 o'clock this afternoon when we will meet in this same room.

The next panelists will be a group representing the National Senior Citizens Law Center, Mr. Edward King, and Mr. Dennis Sweeney, representing the Baltimore Legal Aid Bureau.

They will be on at 2 o'clock when the committee resumes at that time.

The committee is in recess until 2 o'clock.

[Whereupon, at 12:15 p.m., the subcommittee recessed to reconvene at 2 p.m.]

AFTERNOON SESSION

Mr. JACOBS [presiding]. This is a continuation of the hearings on the proposed changes in the social security program, and our next

panel consists of the National Senior Citizens Law Center represented by Edward C. King, directing attorney of the Washington office and the Baltimore Legal Aid Bureau represented by Dennis M. Sweeney, the chief attorney.

Gentlemen, you are welcome to the committee, and I presume you know that if you have formal statements they can be submitted for the record and if you can summarize we will all be happy.

Mr. SWEENEY. Thank you.

PANEL CONSISTING OF DENNIS M. SWEENEY, CHIEF ATTORNEY, ADMINISTRATIVE LAW CENTER, LEGAL AID BUREAU, INC., BALTIMORE, MD., AND EDWARD C. KING, ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER, WASHINGTON, D.C.

STATEMENT OF DENNIS M. SWEENEY

Mr. SWEENEY. I am the chief attorney for the Administrative Law Center of the Legal Aid Bureau in Baltimore, Md. Next to me is Edward King, the directing attorney of the Washington office for the National Senior Citizens Law Center.

We would ask that both of our formal statements be made a part of the record, and I would just like to outline some of the major points concerning H.R. 8076 which is one of the main bills before this committee.

We feel that there are many provisions of H.R. 8076 which deserve prompt and favorable consideration by this subcommittee. One of the most favorable sections of this bill is the provision to provide face-to-face reconsiderations for the claimant. This process, we believe, would strengthen the disability determination process in that the claimant would have an opportunity to actually see the person that is going to be making the decision in his case and be able to have this opportunity at an early stage in the claim.

We feel that this face-to-face reconsideration process would be a very beneficial step both for the claimant, who would feel that he receives a fairer determination, and for the administration because we feel these provisions will lead to better decisionmaking.

Therefore, we strongly support the bill's provisions for face-to-face reconsideration.

There are two provisions in this bill that we are less than satisfied with. One of these is the disability court provision. This revision of the act would establish a so-called article I tribunal which would consider cases in lieu of the Federal district courts. This is a radical proposition, a change in the Social Security Act process which has existed since the late 1930's, and always provided for Federal district court review.

We feel that at this juncture the creation of a highly specialized administrative tribunal created independent of the agencies without Federal district court review, as has been traditional, is not a proper step. We would note that there are several objections in our testimony to the disability tribunals. Perhaps the most serious of these is that it is a highly specialized court considering only disability claims. This great degree of specialization would lead, in our opinion, to

the court not being able to attract the best candidates for the court and also would lead to the court becoming overly specialized and possibly being filled with former agency officials in the long term.

There are many other problems with disability courts and Mr. King will develop some of those additional problems.

Our second major problem with this bill concerns the definition of disability. Under this provision the claimant would have to either meet the listing of impairments which is the standard for widows' claims at this time or if he is over 50 he would have an occupational test but he would only receive a reduced benefit under the occupational standard. We feel that there has been much dissatisfaction with the widow disability program as it currently exists which has this disability standard. It is, in my experience, having represented many widows receiving disability benefits, one of the most difficult to explain to claimants and the one where a denial by the agency leads to more feelings by Claimants that it is unfair and their full case has not been considered.

Creating this standard, the listing standards of disability, which this bill does, really turns the disability determination process over to the doctors. Now, that may be good. It may be bad. But I think the committee should be aware of that. It converts the adjudicators in the system, such as an administrative law judges, in my opinion, to being paper shufflers.

We feel that this bill is very restrictive in its definition of disability. We feel that it is going to lead to much resentment on the part of the insured population which presumes that they are getting disability insurance that will be the type of insurance that will pay them when they become realistically disabled but this provision will create listings of impairments which will be extremely technical and one in which if you do not fit into the proper pigeonholes you will be out of the system completely.

As far as the over 50 provisions, are concerned we do not favor it at this time because it reduces the individual's benefits drastically if he meets the over 50 portion. This bill would in fact create a whole new class of legislatively created poor people by reducing their benefits if they meet this over 50 standard. We feel that that provision should not be enacted by the subcommittee and that for the present we should stick with the current definition of disability.

There are several other provisions of the bill that we feel are excellent provisions. The one on the purchase of medical evidence, on travel expenses, and certain portion of the vocational rehabilitation incentive provisions. We have outlined our views in our statements. We feel that there is much merit to this bill. We feel that the bill should not be drug down by the disability court provision which is very questionable at this time, or the change in the definition of disability.

I would note that the ABA's Center for Administrative Justice is currently doing a study of the disability insurance system at the request of the Social Security Administration. This has been a long, ongoing 2-year study. I think before anything is done with the disability court that this subcommittee should wait until this fall when that project reports with its findings concerning the appeals process.

Mr. Chairman, I wish to thank you and members of the staff for allowing myself to testify, and I believe Mr. King has some additional statements.

[The prepared statement follows:]

STATEMENT OF DENNIS M. SWEENEY ON BEHALF OF THE ADMINISTRATIVE LAW CENTER, LEGAL AID BUREAU, INC., BALTIMORE, MD.

Mr. Chairman; my name is Dennis M. Sweeney. I am an attorney and work for the Administrative Law Center of the Legal Aid Bureau in Baltimore, Maryland. I supervise a group of legal services attorneys who annually represent hundreds of low income claimants for disability benefits in hearings before Administrative Law Judges, the Appeals Council, and in proceedings in Federal Courts. We are concerned with the fairness and equity of the hearing and judicial review process in the Social Security system and I will direct my testimony today to the elements of H.R. 8076 which directly touch on this process. I will also briefly discuss other provisions of the bill. I note at the outset that my time to review this bill has been very limited and I give my views as tentative ones which may change upon further analysis. Although, I am speaking today only as the representative of the Administrative Law Center of the Legal Aid Bureau, I recently attended a meeting of legal services attorneys who work regularly in Social Security and SSI matters where this bill was discussed at length and I believe that my views are consistent with the views expressed by the overwhelming majority of persons attending that meeting.

A. FACE TO FACE RECONSIDERATION

We feel that the proposal in the bill which mandates an actual interview with the claimant at the reconsideration level is a very positive step and one which the subcommittee should approve without substantial modification.

This procedure of actually having the decision maker talk with the claimant before a decision is reached has many beneficial aspects. First, claims will be more fully developed at an earlier level, thus insuring that the claim is considered on all the evidence. When a claimant appears in person before the decision maker, he can be asked directly about new evidence and any confusing or ambiguous aspects of the claim. These matters can be clarified at the earliest point possible and need not drag on until the hearing level.

Second, most claimants will undoubtedly feel that they are receiving a fairer decision since they will have actually spoken with the person making the decision. Presently, claimants at the reconsideration stage feel with justice that they have received an impersonal decision devoid of the reality of their particular situation. Under the current system, claimants receive a form notice of denial which tells them little about the specific reasons for the denial. The personal conference coupled with the more detailed decision required by the bill will surely lead to fairer decision making.

Although the section of the bill on face-to-face reconsideration is a very good one, there is one minor change which would improve it. We feel that the distance the claimant should normally be expected to travel to the interview site without asking for special considerations should be reduced from 100 to 25 miles. Requiring disabled persons to travel long distances will discourage the most disabled from pressing for the interview since they may feel that they cannot undergo such a trip without further harm to their physical well-being.

B. DISABILITY COURT

The most radical concept in this bill is the Disability Court. This new type of "court" or administrative tribunal would replace a system of judicial review by United District Court Judges which has been in place since the inception of the Social Security program. This proposal has been put forth because it is suggested that it will relieve the workload of the Federal District Courts and secondly, it will enhance "uniformity and quality of decision making".

The bill's purpose of relieving the Federal District Courts can be accomplished by less drastic methods such as more utilization of federal magistrates and better management in the Courts. It should also be noted that almost $\frac{1}{2}$ of the current load of Social Security cases in the District Courts are black lung cases. These cases will gradually disappear from the District Courts, leaving a volume for the District Courts of more manageable proportions.

While it is certainly a laudable goal to try to achieve uniformity and better quality of decision making, this remedy is a drastic one and perhaps is not directed at the real problem, which is Social Security's unwillingness to develop a coherent and fair body of precedent in the disability area. Social Security has not, as many studies have stated, taken an active leadership in challenging court decisions it does not agree with. It does not appeal, but then becomes disturbed when other courts and ALJs follow the precedent. Aggressive and active leadership on the part of the Social Security Administration components responsible for disability policy and adjudication could greatly obviate the chaotic situation which has developed on certain issues. A less drastic and more satisfactory solution to this problem would be for the main components (BOI, BHA and General Counsel) to meet regularly to resolve outstanding areas of concern and issue interpretative rulings under the Commissioner's authority. Taking the great leap to a Disability Court to resolve the problem of uniformity and precedent setting evades the real problem which are inside the agency components.

There are many other problems with the Disability Court which cause us to question its worth at this time. I will outline some of these:

Overly specialized.—This Court would handle only one thing, disability claims. It is hard to believe that such a Court could attract and keep high quality attorneys.

If there is to be an administrative tribunal of some sort, it should handle a wide scope of appeals from federal agencies.

Bifurcates the system.—The already confusing multilayered Social Security appeals process will become even more so for those claimants who have a disability issue and another non-disability issue in their claims. They will end up in two different courts on different parts of their claims. We should try to simplify this system, not make it more complicated.

Institutionalized court.—Because of its specialized nature, there is a reasonable fear that the Court will become populated with retired senior officials of Social Security or H.E.W. who have spent long years directly or indirectly defending agency policy that may be attacked by claimants in the Disability Court. A court with such a majority on it would be highly suspect to claimants and the attitude of the claimants and their attorneys to such a Court could undermine its utility, effectiveness and increase appeals from it to the U.S. Court of Appeals.

Adversarial nature.—The scheme of the bill allows Social Security to appeal awards favorable to claimants to the Court. This is the first time that such appeal rights has been granted to the Administration. This step means that Social Security's attorneys will be contesting awards made to many unrepresented claimants. There is no mechanism in this bill to provide low cost or free representation for such claimants.

Backlogs.—With only 20 judges on this Court to cover the entire nation and with the commendable mandate that hearings of the Court be accessible to claimants, the judges are going to be very busy and soon facing a substantial problem of heavy backlog, delay for claimants, and pressures to sacrifice quality decision making for speed. This bill is almost by its very terms and built-in limitations an appeals crisis waiting to happen.

Clarifications.—Under this bill, many facets of the Court are very unclear. What role do the "commissioners" play? Why is notice and opportunity to be heard denied in proceedings before the Disability Court upon review? What role does the Chief Judge play? How much supervision will the Chief Judge exercise over the other judges? Why does the Chief Judge alone have the power to select decisions which will have precedential value? These and other questions should be answered before this important legislation proceeds any farther.

Mr. Chairman, although the idea has some merit, we feel that a Disability Court is not ripe for implementation at this time. We suggest that the Subcommittee reject this proposal since it is a mechanism that would in its present form merely exacerbate the problems of the Social Security appeals process.

C. DEFINITION OF DISABILITY

Section 3 of this bill would in effect convert the current Title II disability program into a medical listings standard which would award benefits only to those who meet specific medical criteria prepared by the secretary. The only class excluded from this very strict test of disability would be those persons over 50 who are unable to do work similar to that they did previously. However, this group will receive a substantially reduced monthly benefit for the re-

mainder of the time they are on the rolls which in most cases will probably be the rest of their lives. The revision of the definition would lead in our opinion to a severely restrictive disability program which would harm many persons and help only a few.

The Social Security Administration has had experience under the medical listings with the current widow's disability program. This program is the one most difficult for claimants and the public to understand. The widow's case depends entirely on the individual meeting a medical listing. This in turn is decided in large part by a medical consultant who usually never sees the claimant. His judgment invariably becomes the final decision and decisions makers such as the ALJs become merely expensive paper processors. The medical listings are very limited in scope. Many persons with severe problems do not fit neatly in the pigeon holes of the listing.

Recently, the Public Broadcasting System's program "Consumer Survival Kit" broadcasted a program on Social Security in which they highlighted a lady we represent who is a claimant for widow's disability benefits. She was a pathetic person clearly unable in any reasonable view to do any substantial work activity; yet she had been denied widow's disability benefits because she did not neatly fit the standards of the medical listings. If this revised definition is actually put into place, we predict that large numbers of severely disabled persons will be left without any remedy.

This program is a restrictive one and will lead to much greater dissatisfaction from claimants and from wage-earners who believe they are paying into a realistic program of disability insurance.

The over 50 exception at a greatly reduced monthly benefit will insure that many people who would now be able to lead meager but adequate subsistence standards will be plunged into poverty. This reduced benefit section will only insure that Congress will add hundreds of thousands of older Americans to poverty levels of income.

Another facet of this scheme deserves attention. An over 50 person who meets the occupational portion of the test can get his benefit increased if he can show he meets the medical listings. Therefore, it will be in his own interest to be continually challenging any determination that he does not meet the listings even while he is getting the other type of benefits. This could well lead to a multiplicity of claims and perhaps an even larger backlog and more delays in the overall system.

We oppose this definition and feel that the Subcommittee should quickly reject it.

D. PAYMENT FOR EXISTING MEDICAL EVIDENCE AND CERTAIN TRAVEL EXPENSES

We vigorously support Sections 11 and 12 of the bill and feel these are admirable improvements in the current system. We hope that the Subcommittee will make it clear in the legislative history to Section 11 that the medical evidence which will be compensated for can be obtained by the claimant or his representative and need not have been obtained only through Social Security channels.

E. CONTINUED PAYMENT OF BENEFITS TO INDIVIDUALS UNDER VOCATIONAL REHABILITATION PLANS

This is an excellent provision and insures that an individual who has been encouraged to enter vocational rehabilitation activities does not suffer the loss of these benefits while engaged in good faith rehabilitation efforts. I have personally had several clients who have been adversely effected by the sudden loss of Title II disability benefits while they were in the middle of a vocational program that would have insured their re-entry into the labor market. In many cases, the abrupt loss of benefits for the claimant and his family prevent the individual from completing his rehabilitation program.

F. REMANDS

We support the portions of the bill which take away the mandatory remand if the Secretary makes the request before his answer. We feel that such remands should be discretionary with the Court and require a showing of good cause.

However, we feel that it is unwise to allow all other remands only where there is "new evidence." While there may be some judges who have too easily remanded cases in the past, this fact does not support the very severe restrictions placed

in the bill on the remand power. Generally, courts now remand for one of the following reasons:

- (a) New evidence;
- (b) Failure to grant the claimant a full and fair hearing, or
- (c) Failure of the Secretary to judge the claim by the proper legal standards.

To exclude the last two grounds as grounds for remand and force the federal judge to decide the case on an incomplete or defective record will further detract from uniformity of decision making and fairness in the system. We submit that the problem is not one of courts too readily remanding claims, but rather the problem arises from the poor decision making that is done inside of Social Security. There are simply too many claims coming to the courts which are poorly developed by Social Security and in which clearly illegal standards were applied to the claims by the ALJ or the Appeals Council. This problem will not be solved by forcing the courts to in effect make the de novo decision on the claims.

G. EARNINGS LEVEL FOR DETERMINING SUBSTANTIAL GAINFUL ACTIVITY

We support the increase in the levels of earnings from work activity as indicators of substantial gainful activity. These changes are long overdue.

We are however very concerned over the proposed "experiments and demonstration projects" regarding work activity and the broad power given to the Secretary to "waive compliance with the benefit requirement of Titles II and XVIII". We feel that these broad powers could lead to programs initiated by over-zealous administrators to use disabled persons as guinea pigs in coercive projects with no statutory protections provided to the claimant in the receipt of his benefits.

We feel that the details of any such projects, experiments, etc. should be made clear and shown not to be repressive or coercive. We also feel that statutory protections should be afforded to the claimant to protect his entitlements and allow him a hearing or conference to protest any plans to place him into an experimental program under these sections.

H. PERIOD OF TRIAL WORK

We feel that the section on trial work period with its 24 month period and extension of Medicare benefits is a positive proposal which merits support.

I. VOCATIONAL REHABILITATION SERVICES

We have been unable to this date to effectively gauge the impact of this proposal especially weighing the added \$200 million proposed for the VR programs in fiscal 1981. We are concerned however about the "bounty" system proposed to give the states a bonus for getting claimants off the rolls and into vocational activity.

In this bill, there does not appear to be any significant protection for a claimant who is being forced into a completely unsuitable job by a VR service hungry for its "profit" or bonus. This program will also encourage VR to concentrate on the easy VR cases and indeed make cases into ones handled by VR when the person could reasonably be returned to vocational activity without any VR services. The people VR will not concentrate on will be the difficult cases, i.e., those who do need a lot of help and counseling to develop into productive individuals. VR will be looking for the easy profit on the easy cases.

We think this provision is very questionable and should be rejected by this Subcommittee.

J. ELIMINATION OF REQUIREMENTS THAT MONTHS IN MEDICARE WAITING PERIOD BE CONSECUTIVE

This is a good provision which eliminates a disincentive to persons getting off the disability rolls. It should be speedily enacted.

K. TIME LIMITS AND DELAY

We are pleased to see in the face-to-face reconsideration process proposed in this bill, time limits for the Secretary to complete his processing of disability claims on reconsideration.

This is a good first step and we feel these limits do not impose an unwarranted burden on the Administration. Federal Courts in Kentucky, Massachusetts and Connecticut have ordered the Secretary to speed up his processing of claims and generally the Secretary has been able to comply with such court ordered time limits.

It has been argued that imposed time limits will affect the quality of decision-making; yet this argument evaporates when the actual system is looked at. I have attached to my testimony a study done in New York which concludes that delays in the Social Security process are largely attributable to non-productive waiting times when claims are not actually being worked on. We feel that the Social Security Administration and the state agencies which decide the first two levels of claims can work effectively under time limits such as those proposed in this bill.

Mr. Chairman, you, the members of this Subcommittee and the staff are to be congratulated for taking the leadership role in attempting to improve the Social Security disability system. We find much merit in some of the provisions of H.R. 8076, and we hope that you move quickly to bring these improvements to the people. However, as we have pointed out above, there are some very questionable portions of this bill which should be severed from this bill and put aside for further study and development.

DELAYS IN THE SOCIAL SECURITY DISABILITY CLAIMS HEARINGS PROCESS IN NEW YORK—LEGAL ACTION SUPPORT PROJECT

(By Phillip Weitzman, Ph. D., Michael Griffing, and Andrew Pitts)

INTRODUCTION AND METHODOLOGY

This report has been prepared by the staff of the Legal Action Support Project of the Bureau of Social Science Research, Inc., Washington, D.C. at the request of Legal Services for the Elderly Poor, New York, New York. It deals with issues concerning delays found in the "hearing" stage of the Social Security disability (Title II) claims process in the State of New York. The purpose of the study is to identify the sources of delay in the process and, to the extent possible, explain their cause.

The data used in this analysis were provided on computer tape by the Bureau of Disability Insurance of the Social Security Administration in Baltimore. The tape included information on disability hearings held in New York over the three year period from 1973 to 1975. Analysis was limited to 6,427 cases which came up for hearing for the first time (as opposed to "remanded" cases, dismissals, etc.) and which actually went through the entire process and not abandoned or otherwise aborted before completion.

The information contained on the computer tape was taken from the Case Record Card (Form HA-503) maintained by the Social Security Administration. The form identifies a variety of procedural and administrative steps in the hearings process and records the date on which each step occurred. These steps are as follows:

- Request for hearing filed.
- Request for hearing received.
- Claims file received by hearing office.
- Case assigned to Administrative Law Judge (ALJ).
- Hearing held.
- Hearing decision mailed to recipient.

The HA-503 form also contains information about:

- Cases transferred to other offices or other judges.
- Case "development" to obtain additional medical or other evidentiary material.
- Postponements of hearings.
- Representation by attorney or other representative.
- Outcome (affirmance or reversal).
- Other miscellaneous facts concerning the case.

Our analysis involved computing time gaps between the various steps in the administrative process, assessing the overall delays, and identifying where within the process the delays were occurring. We analyzed the impact of factors like development, transfer, postponement, and representation on the length and outcome of the cases. In addition, we divided the data into "New York City" and "other New York State" to see if this shed any light on the source of delays.

SUMMARY OF FINDINGS

1. The hearing process in New York State averages approximately 8 months and delays are largely attributable to nonproductive waiting time.
2. Longer processing times do not affect outcomes.
3. The impact of postponement, transfer, and development on average processing time is negligible.
4. Delays are not the result of ALJ's having to undertake extensive development for unrepresented claimants.
5. Representation has a dramatic effect on the rate of reversals.
6. There is little overall difference in hearing delays between New York City and the rest of the State.
7. Delays in New York State are greater than the national average.

ANALYSIS

1. The hearing process in New York State averages approximately 8 months and delays are largely attributable to nonproductive waiting time.

The data supplied by the Social Security Administration for the three years under study indicate that the average New York State claimant waited 237 days or about 8 months from the time application for a hearing was filed until a decision was rendered. (See Table 1.) If we break down the cases into three groups each with approximately one-third of the total, we find that even the fastest one-third took an average of 132 days or about 4 months to complete; the slowest one-third averaged almost one year (351.6 days).

TABLE 1.—MEAN ELAPSED PROCESSING TIME (DAYS)

	Total New York State (n=6120)	Percent of total time	All cases taking less than 180 days (n=1935)	All cases taking between 180 and 270 days (n=2176)	All cases taking greater than 270 days (n=2009)	Difference between slowest and fastest group
Total time ¹	236.9	99.9	132.0	224.2	351.6	219.6
Request filed—claims file received.....	32.3	13.6	23.9	32.0	40.8	16.9
Claims file received—ALJ assigned.....	43.9	18.5	21.9	43.9	65.5	43.6
ALJ assigned—hearing held.....	111.5	47.1	62.6	107.0	164.2	101.6
Hearing held—decision date.....	49.0	20.7	26.0	41.5	79.1	53.1

¹ Total time does not necessarily equal the sum of the component steps in the appeals process due to the fact that the data cards often contain missing values. For example, the data card might include the date of the request for a hearing and the date the decision was rendered, but omit the date on which the ALJ was assigned. In order to preserve and use as much information as possible, our calculations employ all available data. In the example here, we would include the case in calculations of total time but the case would not be included in calculation of the period ALJ assigned to hearing held.

The vast majority of the claims processing time is taken up by essentially unproductive waiting time. To illustrate this point, we examined the entire procedure in order to make rough estimates of the time within which each step of the process can be completed. It should be noted that we formulated a range of estimates which allows a margin of error for unexpected problems. Our resulting estimate is that the period from the date the request is filed until the decision is made should take no more than 60-90 days.

a. Request filed to claims file received (32 days actual versus 7-14 days estimate)

For the period under study, it took an average of 32 days (14 percent of total processing time) from the time the requests for hearing were filed until receipt of the claimant's file. It appears that little can be done to prepare for a hearing without a claimant's file. At the same time, an average of 11 days (4.5 percent of the total time) elapsed between the time a request for hearing was filed and the time the request was received in the hearing office. We have assumed that some transmission and processing time is necessary and estimate that a reasonable time for receipt of the hearing request and the claims file by the hearing office is 7-14 days.

b. Claims file received and assignment of ALJ (43.9 days actual versus 0-10 days estimate)

The time during which the claimant's file is received in the hearing office until the assignment of the case to an Administrative Law Judge consumed almost 44 days (18.5 percent of total time). We know of no technical impediment to assigning a case to a judge as soon as the claimant's file is received. In some offices around the country cases are assigned upon the receipt of the file without delay. A master docket system is used in New York.¹ We can discern few, if any, reasons for assignment becoming a source of delay. While we believe that this step should be completed without delay, we have allowed an outside limit of 10 days for unexpected problems.

c. Assignment of ALJ to hearing date (111.5 days of actual versus 21-35 days estimate)

It is at this stage of the process that the preparations for hearing occur. The Administrative Law Judge and/or his assistants examine the file, read the various exhibits, prepare the exhibits list, prepare and send the notices for the hearing. In a minority of cases (19 percent) the ALJ decides after examining the file that pre-hearing case "development" is necessary and the case is sent out for development. In some cases, the ALJ also decides to have a vocational or medical expert testify at the hearing. Additional time is also taken up by the advance notice period provided to the claimant.

During the study period, this process alone took more than 111 days (or 47.8 percent of the total time). Taking account of the tasks to be performed, the ALJ's preparation including secretarial work in preparing lists and notices, consumes only a few days of actual work time. To this we would add a period of perhaps 10 days as reasonable advance notice of the hearing. Thus we believe the majority of cases (81 percent during the study period) which are not sent out for additional development could be ready for hearing in 14-21 days.

It would appear that development can take place at the same time that some of the processing discussed above is completed. The 19 percent of cases in which development occurred took, on average, 31 days longer than cases without development, only part of which can be attributed to the period between assignment to the ALJ and the hearing date. (There may also be post-hearing development).² We have no reason to believe that all of this time is inviolable "necessary" time. Including time for development, we believe it reasonable to hold hearings within 21-35 days after cases are assigned to the ALJ. Time taken up by postponement and transfer of cases to other judges or hearing offices is not included in this estimate and should not be to the extent the claimant is responsible for such delays.³

d. Hearing to decision date (49.0 days actual time versus 30 days estimate)

It took ALJ's an average of 49 days during the study period to render their decisions after hearings. The Report of the Disability Claims Process Task Force indicated that there was no rational justification for the long delays at this final stage of the process. Barring delay attributable to the individual, such as a request for post-hearing development or to introduce additional evidence, the Task Force unequivocally recommend that the Bureau of Hearings and Appeals institute a requirement that decisions be rendered within 30 days of hearing.⁴ Accordingly, we adopt 30 days as our estimate of the time reasonably required for this step.

A summary of our estimates along with actual processing times for the cases under study is presented in Table 2. Based on the information above, we estimate that between 62-72 percent of all time spent in the hearings process was essentially unnecessary waiting time. Our estimates, which we believe are generous to the defendants, are that the entire hearings process should take on the average no more than 60-90 days. This is consistent with the announced objectives of

¹ "Report of the Disability Claims Process Task Force," Recent Studies Relevant to the Disability Hearings and Appeals Crisis, U.S. House of Representatives, Subcommittee on Social Security of the Committee on Ways and Means (Washington: U.S. Government Printing Office, Dec. 20, 1975) p. 98.

² The impact of case development on the overall mean processing time is minimal. See section 3 below.

³ Transfers are not always requested by claimants. See footnote 7.

⁴ "Report of the Disability Claims Process Task Force," supra note 1, p. 99.

the Social Security Administration to reduce the elapsed time to a maximum of 90 days.²

TABLE 2

	Total New York State processing time	Percent of total time	Estimated required processing time	Current unproductive waiting time
Total time ¹	236.9	99.9	58-89	178.9-147.9
Request filed—claims file received.....	32.3	13.6	7-14	25.3- 18.3
Claims file received—ALJ assigned.....	43.9	18.5	0-10	43.9- 33.9
ALJ assigned—hearing held.....	111.5	47.1	21-35	90.5- 76.5
Hearing held—decision date.....	49.0	20.7	30	19.0

¹ See footnote, table 1.

2. Longer processing times do not affect outcomes.

In the previous section we saw that disability appeals take approximately 8 months from the date the request is filed until the decision date. There is, however, considerable variation in total processing time. Table 1 presented mean processing times broken down into three groups according to length of total time elapsed. The first group includes all cases with total processing times of less than 180 days. The second group is all cases taking between 180 and 270 days, while the third group is all cases which took in excess of 270 days. Average total time elapsed within each group is 132.0, 224.2, and 351.6 days respectively.

We also see from Table 1 that most of the variation in total time arises in the period between assignment of the ALJ and the decision date. The question arises whether these longer processing times work to the benefit of claimants. Table 3 indicates case outcomes by the three groups of cases outlined above:

TABLE 3

	Affirmations (percent)	Reversals (percent)
Cases taking less than 180 days.....	52.7	47.3
Cases taking between 180 and 270 days.....	56.7	43.4
Cases taking greater than 270 days.....	54.8	45.2
All cases.....	54.8	45.2

As we can see from Table 3, the reversal rate for all cases was 45.2 percent. Furthermore, the reversal rate is not significantly affected by length of processing time. We can reasonably conclude that longer processing times do not affect outcomes.

3. The impact of postponement, transfer and development on average processing time is negligible.

Since transfer, development, and postponement prolong the individual cases in which they occur, they can have a significant effect on the overall average processing times. The extent to which they do affect total elapsed time depends on (1) how long each procedure takes and (2) how often each procedure occurs.

Table 4 shows average processing times for all cases and for those cases which were postponed, transferred, and developed.

TABLE 4

	Mean total processing time (days)	Percent of all cases (n=6,427)
All cases.....	236.9	100.0
Postponed cases.....	281.6	10.1
Transferred cases.....	275.4	12.1
Developed cases.....	268.1	19.2

² "It is our objective to provide every individual with a hearing decision within 90 days of the request for hearing, excluding and barring any delays caused by the individual or by the need for a consultative medical examination, two circumstances which will by their nature require more time." Statement of Hon. James B. Cardwell, Commissioner, Social Security Administration, Department of Health, Education, and Welfare, "Delays in Social Security Appeals," Hearings before the Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, Sept. 19, 26; Oct. 3 and 20, 1975, at 39. It should be mentioned that consultative medical examinations are performed by the State agency. Over the period under study, State agency development was used in only 7.3 percent of all cases. See footnote 8 below for breakdown of cases by type of development.

Postponed cases took approximately 45 days longer to process;⁶ transferred cases took 39 days longer; and cases which were developed took 31 days longer. Thus each procedure, when it occurs, significantly prolongs the appeals process.

Table 4 also indicates that these procedures are infrequently used. For the period under study, only 648 or 10 percent of all cases were postponed and 778 or 12 percent of all cases were transferred.⁷ Development occurred in 1,231 or about 19 percent of cases.⁸

An examination of mean total processing times for cases which were not subject to these procedures yields the following data (Table 5):

TABLE 5

	Mean total processing time (days)
All cases.....	236.9
Cases not postponed.....	232.0
Cases not transferred.....	231.4
Cases not developed.....	230.4

We can see that postponement adds only 4.9 days to average processing time; transfer adds only 5.5 days; and development adds only 6.5 days. Thus, while it is true that those procedures prolong the appeals process in the individual cases, their use is so infrequent that they have a negligible impact on average processing time for all cases.

4. Delays are not the result of ALJ's having to undertake extensive development for unrepresented claimants.

Claimants were represented by attorneys in 29 percent of the cases and by nonattorney representatives in 43.1 percent of the cases, while 27.8 percent of the claimants were unrepresented. It might be suggested that extensive, time-consuming development is necessary in order to insure fair hearings for unrepresented claimants.

Table 6 shows the relationship between presence of an attorney and incidence of development.

TABLE 6

	No development (percent)	Development (percent)
No attorney present.....	80.6	19.3
Attorney present.....	81.3	18.7

The percentage of cases developed was about the same for all claimants, regardless of attorney representation—19.3 percent without an attorney and 18.7 percent with an attorney. It appears, therefore, that there is no relationship between representation or nonrepresentation by counsel and the use of case development. Furthermore, development has little effect on the outcome of cases. Table 7 shows the relationship between development and outcome.

TABLE 7

	No development (percent)	Development (percent)
Affirmed.....	54.8	52.6
Reversed.....	45.2	47.4

⁶ Even if postponements are usually requested by claimants, we cannot assume that the entire delay of 45 days is attributable to the claimant. Part of this time is certainly due to delays in rescheduling the hearing.

⁷ According to a report by the U.S. Comptroller General intraregional transfers "are the responsibility of the regional chief ALJ" and are made on the basis of the size of the backlogs at hearing offices. Interregional transfers are authorized by SSA "when there is an excessive backlog in a hearing office and (1) other offices within the region cannot render assistance because of their own backlog or (2) assistance could be provided more economically by a hearing office in another region because it is closer." See "Problems and Progress in Holding Timelier Hearings for Disability Claimants" Report of the Comptroller General of the United States. Washington, D.C.: U.S. Government Printing Office, Oct. 1, 1976, at p. 18.

⁸ The breakdown of all cases (n=6,427) by type of development is as follows: District office—2.2 percent; State agency—7.3 percent; other—9.6 percent.

Thus development only has a slight impact on the probability of reversal.

5. Representation has a dramatic affect on the rate of reversals.

Only 27.8 percent of claimants appeared in the hearings process without some form of representation, but only 18.7 percent of claimants were represented by an attorney alone. The remaining claimants were represented by either a non-attorney alone (43.1 percent of claimants) or by both an attorney and nonattorney working together (10.3 percent).

Table 8 shows the impact of the different kinds of representation on case outcomes.

TABLE 8

	Percent of cases (n=6427)	Affirmations (percent)	Reversals (percent)
No representative.....	27.8	63.8	36.2
Attorney.....	18.7	49.1	50.7
Nonattorney.....	43.1	53.9	46.1
Both.....	10.3	40.6	59.4
Total.....	99.9	54.4	45.4

The above data suggest that an unrepresented claimant is substantially more likely to be denied benefits than someone who has an advocate in his or her behalf. Representation by an attorney is slightly more effective than representation by a nonattorney, but representation by both an attorney and a nonattorney is associated with the greatest proportion of reversals—almost 60 percent as opposed to only 36 percent for claimants without any representation.

6. There is little overall difference in hearing delays between New York City and the rest of the State.

During the three year period for which data was provided, approximately 55 percent of the hearings were held in New York City and 45 percent in the remainder of New York State. As indicated in Table 9, there is a relatively small difference between New York City and the rest of the State in the total time elapsed from the time the request is filed until decision date. The mean total time for New York City is less than that for the remainder of New York State by approximately seven and one-half days. Although the initial administrative steps take more time in New York City, the speed at which the case is decided once the Administrative Law Judge is assigned more than counterbalances the earlier delays. On balance, however, there is little overall difference that can be attributed to location.

TABLE 9.—MEAN ELAPSED PROCESSING TIME (DAYS)

	Total New York State (n=6427)	New York City (n=3545)	New York State outside New York City (n=2882)
Total time.....	236.9	233.6	241.1
Request filed—claims file received.....	32.3	35.6	28.1
Claims file received—ALJ assigned.....	43.9	48.7	37.6
ALJ assigned—hearing held.....	111.5	109.1	114.5
Hearing held—decision date.....	49.0	40.7	59.8

7. Delays in New York State are greater than the national average.

In order to put the data obtained concerning hearing delays into perspective, it should be instructive to compare processing times of New York State with national averages. In 1974, the Social Security Administration drew a national sample of 427 cases for analysis of processing times. The results of this survey are shown in Table 10, with comparable times from New York State in 1974.

The data indicate that the delays in New York State were substantially greater than the national norms. In the case of affirmances, New York was 48.2 days longer and for reversals 23.1 days longer. Almost all of this difference is attributable to the time period between the date an ALJ was assigned and the date the hearing was held. For this period, the New York mean was 71 percent higher than the national average (116.8 vs. 68.2 days) for cases which were affirmed and almost 54 percent higher (121.4 vs. 79.0 days) for cases which were reversed.

TABLE 10.—MEAN ELAPSED PROCESSING TIME (DAYS)

	1974 SSA sample		1974 New York State	
	Affirmances	Reversals	Affirmances	Reversals
Total time ¹ -----	189.2	208.1	237.4	231.3
Request filed—claims file received-----	25.4	26.1	30.1	32.3
Claims file received—ALJ assigned-----	35.6	48.0	28.4	26.3
ALJ assigned—hearing held-----	68.2	79.0	116.8	121.4
Hearing held—decision date-----	60.0	55.0	62.1	51.3

¹ See table 1, footnote 1. The Social Security Administration does not explain why the total time does not equal the sum of the individual processing stages in its study.

Source: Excerpt from Status Report by Social Security Commissioner Cardwell, "Background Material on Social Security Hearings and Appeals," U.S. House of Representatives, Subcommittee on Social Security of the Committee on Ways and Means (Washington: U.S. Government Printing Office, Sept. 17, 1975) at 21.

Mr. JACOBS. Thank you, Mr. Sweeney.
Mr. King?

STATEMENT OF EDWARD C. KING

Mr. KING. My name is Edward King. I am an attorney with the Washington, D.C. Office of the National Senior Citizens Law Center, a nonprofit corporation funded by the National Legal Services Corp. to specialize in law concerning elderly persons both in support of other services attorneys and in direct representation of elderly persons.

As has been said already, we have filed a statement concerning H.R. 8076 with the committee and we ask that it be included as part of the record. I do not propose to repeat those statements but will simply summarize the positions discussed more fully there.

My colleague, Anne Silverstein, of the Los Angeles office has prepared that portion of the statement dealing with earnings limitations, the benefit computation formula, and retroactivity of payment, general revenue financing, and the appeals process. Those comments, I believe, are self-explanatory in the written statement.

Ms. Silverstein was unable to attend the hearings. In the absence of questions, I do not propose to elaborate on the portions of those statements written by her which I have alluded to.

The balance of the statement deals with the disability court concept and it is with respect to the disability court that I wish to address the subcommittee today.

The establishment of such a disability court, which Mr. Sweeney has called radical, would at least certainly be a major development in the law. Mr. Sweeney has mentioned that a thorough study of the social security decisionmaking framework is being done by the Center for Administrative Justice at the request of the Social Security Administration and we too emphasize that the results and recommendations of such a study should be considered before deciding upon such a profound change as would be involved in the establishment of something in the nature of a disability court. It would be premature to move toward establishment of such a court without even seeing the results of that study.

Second, to the extent that the disability court is aimed at addressing the general problem of congestion in the court system, we urge that such a solution not be considered in isolation but instead in the context of the overall problems of congestion in the Federal courts.

The disability court concept should be analyzed in connection with other recommendations for suggestions concerning attempts to relieve Federal court congestion.

In our written statement we expressed concern as to whether the disability court would become essentially an administrative arm of the Department of Health, Education, and Welfare, accepting and applying generalized rules in an attempt to attain greater uniformity and efficiency, rather than the case-by-case decisionmaking that exists in our Federal courts. Case-by-case decisionmaking in our judgment is essential.

Another concern is that the highly specialized nature of the court, and Mr. Sweeney has touched upon this, may make service on the court unappealing, causing capable persons to decline appointments to the court and may also lead to a premium being placed upon previous administrative experience, with the judges consequently reflecting the views of HEW.

The important point is that the court system today plays an important role in protecting the rights of claimants and assuring that the decisionmaking process is not overly impersonalized and routinized. Our concerns about the disability court concept in that regard, and the reasons for those concerns are discussed, we have expressed at some length in the statement.

The statement also notes other points concerning the disability court concept as set out in H.R. 8076. First, we suggest if the disability court is to be established, it should be patterned upon the U.S. Tax Court in the sense that there should be some kind of mechanism permitting disability claimants access to the Federal district courts as an alternate forum. The Tax Court, of course, is set up in such a way that decisions of the Internal Revenue can be challenged in the Tax Court, but in the alternative the taxpayer can make payment of the taxes and petition the Federal district court for refund. Some similar mechanism could be developed with reference to the disability court.

There is also a problem with respect to remand. At the present time remand of an action in which litigation has begun may occur when there is good cause for so doing. H.R. 8076 seems to limit the right to a remand, as we have explained in our statement. Such a limitation would inject confusion into an area of the law which is reasonably well developed. Moreover, the limitation is unwarranted if it indeed would, as it seems it might, prevent claimants from obtaining remand where there is a showing the claimant has been denied a full and fair hearing or where the hearing examiner applied incorrect legal assumptions. This would be a disservice to the disability claimants as well as to Congress and the intent of the act.

On the other hand, H.R. 8076 would require a showing of good cause, as a necessary basis, a condition, in order for the Secretary to obtain remand. We applaud that concept, both parties should be required to show good cause in order to obtain remand of the case.

It should also be recognized that the adversarial nature of the disability process would be increased as a result of this bill.

A couple of provisions make that particularly clear. First, when a remand occurs the bill provides that the Secretary will be a party to the proceedings upon remand. The provision suggests that the Secretary would be represented by counsel at that point. That would intro-

duce a greater degree of adversarial nature into the proceedings. Second, the Secretary would be given authorization to appeal from the final decision of an administrative proceeding.

In considering these proposals, the threshold question, of course, is whether a heightened adversarial atmosphere is advantageous.

The committee should also be aware that an increase in the authorization of the Secretary to act as an aggressive advocate could give rise to circumstances where disability claimants, unrepresented, become overwhelmed and are unable to obtain a fair hearing. The purpose of an increased role in advocacy for the Secretary is presumably to assure the quality of the decision, to make sure all the facts are aired.

Therefore, if the Secretary is to be given the additional authority presently reflected in H.R. 8076 to engage in adversarial proceedings, some provision should be added to assure that the disability claimant has the wherewithal to obtain the representation necessary to advocate vis-a-vis the Secretary.

The isolated, specialized nature of the jurisdiction of the disability court is also a serious problem. In some instances, because of the limited specialized jurisdictional nature of the disability court, a particular disability claim may have aspects which would require jurisdiction to be exercised by a Federal district court simultaneous with exercise of jurisdiction by the disability court. Not only would this cause a duality of appeals, with apparent waste, it also would induce litigation as to whether one or both of the courts has jurisdiction over a particular issue.

A similar problem is possible confusion as to the relationship between the disability court and the circuit court of appeals. That has been a problem for the Tax Court. If the disability court concept is to be retained, the subcommittee should address very carefully the question as to the binding or nonbinding effect of the decisions of the circuit court of appeals.

In the same vein, if a disability court is to be established, as is suggested, to promote greater uniformity, a provision should be inserted to assure that when the disability court has ruled on a particular point of law, then that ruling will be followed by the Social Security Administration, not simply for the parties before the court at that time, but implemented in overall policy. Disability claimants should not confront the problem that exists now, where a matter has been ruled on by one court, yet other claimants find themselves having to litigate the same issue in another court against the Social Security Administration. The SSA has earned notoriety for its reluctance to implement the court announced policies with which it does not agree.

A disability court ruling should be binding upon the Administration as soon as that particular ruling is finalized. If there has been no appeal or no reversal of the ruling, so that the litigation is final, the ruling should be incorporated as policy of the Social Security Administration.

Finally, as Mr. Sweeney has suggested, we find ourselves concerned about the person who would populate such a disability court. There would be a strong tendency, we fear, to appoint persons from administrative positions. Such appointees might come to the bench with a good administrative background and perhaps a fairly substantial understanding of the nature of disability litigation, but we are also

concerned that they may be without the perspective of the disability claimant, which, of course, is a very necessary perspective for implementation of this legislation.

We suggest that the subcommittee consider inserting a provision which would provide at least some limitation upon the numbers of persons to be appointed to the disability court bench who would hail from an administrative background.

Overall, we submit that adoption of the concept, disability court concept, now would be premature, and that the concept as embodied in H.R. 8076 would cause more problems than it would solve.

We appreciate the opportunity to address the committee and, of course, are available for any questions.

Thank you.

[The prepared statement follows:]

STATEMENT OF EDWARD C. KING AND ANNE SILVERSTEIN, ATTORNEYS, NATIONAL SENIOR CITIZENS LAW CENTER, WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, the National Senior Citizens Law Center is a federally funded legal services support center concerned with the legal problems of a specific client group; the elderly poor. The Center provides supportive assistance to legal services attorneys throughout the country on matters involving their elderly clients, and also represents elderly clients directly. In recent years, we have provided training for legal services attorneys on Social Security, and have prepared materials on the subject. We have responded to attorneys' requests for assistance on a large variety of Social Security matters, and have also participated, and assisted informally, in litigation involving Social Security issues. Our work in the Social Security area is a natural result of the fact that Social Security benefits are of overriding importance to the elderly poor, and indeed, to all the elderly.

The Social Security topics to which we will speak fall broadly into three categories; proposals which have an impact on the financing of the system; direct and indirect; problems with the system's appeals process, both at the administrative and judicial levels; and proposals concerning the Disability Insurance Program, particularly the portion of Chairman Burke's H.R. 8076 which would establish a new disability court.

A. PROPOSALS WHICH HAVE AN IMPACT ON FINANCING

The earnings limitation.—For a majority of the elderly, Social Security retirement benefits are the sole source of income aside from work; yet such benefits are simply not adequate without supplementation. The earnings limitation as presently structured has a very deleterious effect on the poorest members of the elderly community, who must work to provide an adequate living standard for themselves. With its relatively low ceilings, and because it is not graduated, it bites deepest into the benefits of those at the low end of the benefit scale. More generally, the earnings limitation operates as a disincentive to the elderly who wish to continue productive work.

The experience of our clients does not put us in a position to pass on the fundamental wisdom or fairness of imposing an outside income condition on the receipt of social security benefits, and accordingly we make no specific recommendation as to what the ultimate fate of the limitation ought to be. But that experience does teach us that the earnings limitation as currently structured needs to be changed so that, first, earned income is not as now, restricted to an unreasonably low level, and second, that the weight of the limitation does not fall, as it now does, most heavily on those at the lowest end of the scale. And, because we suspect that the use of annual and monthly ceilings in tandem tends to ameliorate the impact of the limitation on the poor, we urge that the effect of eliminating the monthly ceiling be carefully studied to determine its true impact.

The benefit computation formula and retroactivity of payment.—The President's budget contained several proposals for changing benefit entitlements, the

long and short of which were to cut back benefits and thereby to presumably save money.

Two of the most egregious of these were the proposal to phase out the age 62 computation point (and return to using age 65), and the proposal to limit the payment of retroactive benefits to a period of three months instead of the one year period the law now allows. Prior to the 1972 amendments, the Social Security Act provided that the computation point for benefits was age 62 for women, but age 65 for men. The law now provides that both sexes will use age 62, which results in a more favorable computation, i.e. higher benefits on the same wage record. It would be hard to justify an across-the-board cut in Social Security retirement benefits on the grounds that they are now too generous; but, that is what the effect of this proposed retreat to the old, less generous formula, would be. The proposal to cut back on retroactivity of payment would penalize only the ignorant. Those who know their rights and who file timely applications would not be affected. Those who would be affected are most likely to be those who have not learned how to "work the system."

These recommendations were not mentioned in the President's social security message to Congress of May 9, nor in the testimony of Secretary Califano to this committee. We hope this means that those proposals have been abandoned; but if they have not, should be

General Revenue Financing.—Decisions on what the sources of revenue for our social security system should be are vitally important to our clients as recipients of the social security benefits, because greater adequacy of benefits and completion of the social security agenda are primarily functions of the ability and willingness of the working population to support the system.

In the last seven years, social security retirement benefits have increased dramatically. The average monthly benefit to a single worker will soon be around \$235, whereas not so long ago it hovered around the \$100 mark. Despite these increases, those who must rely on social security benefits as the sole source of retirement income—a majority of the elderly—still do not have adequate incomes. As many others have noted,¹ they, and those who will retire in the future need more adequate protection, not less. At the same time that benefits have risen so dramatically, the burden of payroll taxes on low and middle income wage earners has become proportionately heavier. Many fear, and we believe justifiably, that these workers are not prepared to accept the large increases necessary under the current financing program to shore up social security, let alone improve it.

Continued reliance on the current financing system carries in its wake well known drawbacks. An increase in the tax rate means aggravating the regressive features of the payroll tax. Increasing the wage base produces greater revenue in the short term, but increases future demands against the trust fund.

On the other hand, there is no inherent conflict between the commonly accepted social security principles and reliance on general revenues for part of the costs: our system today uses general revenue funds in certain limited cases, e.g., half the cost of Part B Medicare; the drafter of the Social Security Act assumed that some reliance would be placed on general revenue in the then future; many countries use a financing formula with one-third of the cost borne by government contributions.

The President's proposal is in fact a very modest and conditional one, under which the actual program costs would continue to be borne by payroll tax revenue with general revenue as a backstop to maintain the trust fund reserves. It does not go far enough, but it is a much needed beginning.

The social security system does much more than pay benefits to wage earners on a strict return-of-contributions basis. The political decisions that it should do so were made long ago. But it is precisely for this reason that some of the burden of financing Social Security should be borne by the taxpayers at large. We are, therefore in support of proposals to introduce a measure of general revenue financing into the system.

B. THE APPEALS PROCESS

The Social Security Act directs the Secretary to grant individuals dissatisfied with his initial decisions the right to a hearing, and, if a hearing is held, to reach a final decision on the basis of the evidence adduced at the hearing. Claimants dissatisfied with the Secretary's final decision after hearing have the right to

¹ For example, former Commissioner Robert Ball and Andrew J. Biemiller of the AFL/CIO in their recent statements to the Social Security Subcommittee of the Senate Finance Committee.

judicial review in federal district court on the limited question of whether or not that final decision is supported by substantial evidence. The statutorily mandated appeal process, a hearing followed by limited court review is however, made more elaborate under the Secretary's regulations, and consists of four stages: "reconsideration," basically a paper review; hearing before an administrative law judge—the "hearing" required by statute; review by the Appeals Council—the Secretary's final decision after hearing; and, finally, court review.

Not yet two years ago, this Committee held hearings on delays in Social Security appeals. The problems revealed in the testimony at those hearings have not gone away with the passage of time.

The complexity of the present administrative appeals process, together with the extremely long periods of time required to wend through it, create serious hardships for our clients.

The process should be simplified by reducing the number of required "hearings." Mandatory reconsideration should be abolished by amending the statute to require the Secretary to afford the claimant a hearing decision within a specified time after an initial determination with which the claimant is unsatisfied. The Social Security Administration would not thereby be precluded from conducting a pre-hearing review at the request of the claimant or on its own motion. There is a place for pre-hearing review ("reconsideration"), and the Social Security Administration could increase its effectiveness by substituting face-to-face reconsiderations for reconsiderations on the papers, as is presently the case. But, pre-hearing review, regardless of form, should proceed simultaneously with the processing of the request for hearing, instead of being a prerequisite to requesting a hearing, as is presently the case.

With respect to the Appeals Council review stage, we would suggest either (1) that it be eliminated altogether—in effect then the hearing officer's decision is the final decision or (2) that, if it is felt that Secretarial review of hearing decisions is vital so that the Appeals Council or some equivalent must be retained, very stringent time limits be imposed. For example, the hearing examiner's decision, whether favorable or unfavorable to the claimant, could be deemed to be the Secretary's final decision unless the claimant is notified within 20 days that the Appeals Council has decided to review the case. In other words, after the expiration of 20 days, a hearing decision favorable to the claimant would become final; an unfavorable decision would be appealable to federal district court.

In general, we recommend that benefit payments be required to begin in all cases where a Congressionally mandated time limit for adjudication has not been met by the Social Security Administration. We believe this is the only way to assure compliance with such mandates.

Another problem in the appeals process is the lack of assurance of expeditious judicial review in cases raising issues of constitutional or statutory construction. This lack of assurance stems from a recent decision of the Supreme Court constraining the judicial review provisions in the Social Security Act, *Weinberger v. Salfi*, 422, U.S. 749 (1975).

It is apparent that no purpose is served by requiring claimants as the Court arguably has done, to exhaust the administrative appeals in such cases. The Social Security Administration obviously does not have the power to declare unconstitutional a federal statute under which it operates. Cases challenging administrative regulations as not in conformity with the Social Security Act are also inappropriate for administrative review, because the Bureau of Hearings and Appeals is bound to to apply such regulations.

Although the Administration has promulgated regulations to "expedite" constitutional challenges to provisions of Title II (and XVI), those regulations have proved unsatisfactory: The Administration has total discretion over authorizing the use of this procedure, has refused to authorize it in several cases raising purely constitutional issues, and in some cases where the procedure was used, has delayed for a period of months before allowing the case to proceed. The regulation applies only where the plaintiff stipulates that the case involves only constitutional issues. Thus, issues of statutory construction cannot be raised by a plaintiff seeking to utilize these regulations.

The result of the *Salfi* decision has been to seriously impede federal court review of cases involving constitutional and statutory construction, a traditional office of federal courts. Although such litigation involves a very small percentage of the total Title II cases, it is extremely important litigation due to its precedential impact on the program.

The judicial review provisions of the Social Security Act should be amended to remove the constraints the Court felt bound by in the *Salfi* opinion.

C. THE DISABILITY COURT

We find ourselves unable to offer an unequivocal conclusory statement concerning the provisions of H.R. 8076 relating to establishment of a disability court. These provisions reflect laudable aims, reduction of federal court congestion with greater uniformity and efficiency for Social Security and SSI disability determinations, which we and our clients support fully.

At the same time, we admit to considerable trepidation about any arrangement that would deprive our clients of access to the federal district courts with respect to disability determinations. Disability benefits are of critical importance to impoverished disabled persons and, by and large, the federal district courts have been sensitive and invaluable protectors of the rights of such persons to receive these essential benefits.

We therefore neither denounce nor unreservedly extol the disability court concept. Instead, we will simply share with the Committee our thoughts and concerns in the hope that our perspective may be of some help to the Committee in deciding basic legislative goals for disability determinations, in considering whether the disability court concept embodied in H.R. 8076 would be useful in meeting those goals, and in refining whatever goals and methods of implementation are deemed most appropriate.

Basic Proposition

Two key propositions underlie our comments concerning the disability court and form the basis for our analysis of the concept.

Accuracy of Disability Determinations Is Critical.—We start with the obvious proposition that despite the relative insignificance on a national scale of the amounts involved in any particular determination, disability determinations are typically of awesome importance to the individual claimants and their families. The denial of disability income to such persons may have catastrophic consequences. This can be so whether the determination involves SSI or Social Security benefits.²

Moreover, it should be borne in mind that the Social Security disability program in particular has been labeled, at least in part, an insurance program. In so doing, the United States government has created in workers the expectation that if they become disabled, at least some disability assistance will be provided to them. This governmental creation of expectations has in turn affected conduct of workers, requiring them to make payments into the Social Security system but also reducing the likelihood that they will make arrangements for disability coverage with private insurance carriers. It is surely not inappropriate for such persons to infer a governmental undertaking to provide coverage in substantially similar circumstances to those where private coverage would attach.

Federal District Courts Play a Crucial Role in Assuring Accuracy of Disability Determinations and Protecting Rights of Clients

For disability claimants, federal district courts play a critical role. Much less concerned with "administrative efficiency" and more concerned with assuring that entitled persons will indeed receive coverage, the federal courts have found it necessary on a remarkably high number of occasions to reverse administrative decisions of a Secretary of the Department of Health, Education and Welfare. For example:

² "The tragedy of SSI has been its effect on the aged, blind, and disabled. There are many individuals who totally rely upon the program for their survival. Despite the use of the word 'supplemental' in its name, SSI is often a supplement to nothing * * * the most unfortunate are those who are wrongfully denied benefits initially." *Note, The Supplemental Security Income Program: The "Revolution" Needs Reform*, 62 Cornell L. Rev. 314, 320-21 (1977).

The United States Supreme Court has noted statistics compiled by the Secretary of HEW indicating that in 1965 the physically disabled worker's family unit had a median income of \$2,836 and median liquid assets of \$940. See *Mathews v. Eldridge*, 424 U.S. 319, 342, n.26 (1976). "Note, however, that the * * * survey included persons who considered themselves disabled but who were not receiving and probably could not qualify for Social Security disability benefits. According to that same survey, more than three-fifths of the severely disabled had incomes below \$3,000 and over three-fourths had incomes less than \$5,000 per year.

About half had incomes below the poverty level as of 1966." Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 Chl. L. Rev. 23, 38, n.37 (1976), citing I. Swisher, *Sources and Size of Income of Disabled* (Social Security Survey of the Disabled: 1966, Report No. 16, June 1971).

"In 1971, there were 1,537 new disability complaints in the district courts and 2,260 'old' disability cases awaiting disposition. In that year, the Courts of Appeals decided 86 disability cases and had 69 others pending. The Secretary was affirmed in only 62 percent of the 1971 district court cases. From inception of the disability program through calendar 1970, the Secretary's record in the Courts of Appeals was 232 affirmances and 162 reversals and remands. Liebman, *supra*, citing Dixon, *The Welfare State And Mass Justice: A Warning From The Social Security Disability Program*, 1972 Duke L.J. 681,683,n.12."

This, and the additional fact that approximately 40 percent of disability claimants who seek hearings before administrative law judges obtain reversals of unfavorable rulings issued against them at earlier stages of the administrative proceedings based upon paper submissions,³ indicate the factually complex nature of disability terminations, the necessity for careful case by case decision making, the desirability of upgrading the quality of administrative adjudications and the indispensability of independent judicial review of the administrative proceedings.

Comparison Between Federal District Courts and Disability Courts

Given the critical role presently played by the federal district courts, and the fact that the disability court would assume that role under H.R. 8076, it becomes necessary to consider the characteristics of the federal district and assess the degree to which disability courts would possess, or lack, such characteristics. In doing this, some potential problems become apparent.

Decisionmaking Expertise.—Federal district court judges do not specialize in particular areas of the law. Instead, they specialize in decisionmaking. Each judge, working under court rules promulgated by the local districts and also under general court rules applicable to all, has the opportunity to refine his own decision-making technique as applied in a variety of circumstances.

Federal judges therefore are experts in decisionmaking, with experience in deciding a broad range of issues. In disability cases, indeed, one of the great virtues of the typical federal district court judge may be his very lack of specialized background in Social Security and SSI disability matters. Such a person may be more open-minded and persuaded, free from the biases and predilections which often flow from administrative immersion in the subject.

It is unlikely that the disability court judges will have broad decisionmaking experience. Clearly, the disability court itself will be extremely specialized. Some advantages may accrue from this specialization, in terms of detailed knowledge of legal principles pertaining to disability determinations, and greater familiarity with the kinds of medical and other factual information normally addressed at such proceedings.

It is questionable, however, whether disability determination proceedings are of such complexity to demand such specialized knowledge. In any event, such specialization poses risks with respect to quality of decisionmaking. Aside from the considerations mentioned above, that the generality of decisionmaking by federal judges increases their general decisionmaking competence, as well as their open-mindedness, the specialized nature of the Court may also have other unfavorable effects. It is entirely possible, for example, that the limited and specialized range of issues presented to the disability court may be a strong disincentive against acceptance of appointments to the court by competent, qualified persons. The extreme specialization⁴ of such a court could be stultifying. We fear that persons most likely to find appointment to such a court attractive may be uncreative and unimaginative persons with rather limited background. This could have a great impact on the quality of the decisionmaking. Also, there is always some concern that specialized judges may become jaded and cynical. Judges treated with a steady diet of disability claims, day after day, year after year, could, we are afraid, come to regard each claim as essentially the same as the preceding one, and insignificant.

³ See Mashaw, *supra*, at 38,n.39, citing statistics compiled in operational analysis of the Bureau of Hearings and Appeals of the Social Security Administration for fiscal years 1972 and 1975.

⁴ The degree of specialization of other specialized courts, e.g., the U.S. Tax Courts, Bankruptcy Referees, and the Court of Claims, is by no means comparable. Those other courts retain a rather broad range of decisionmaking responsibility even within their own areas of specialization. In contrast, jurisdiction of the disability court would be strictly limited even within the relatively narrow field of disability determination, with constitutional and other (e.g., needs, income and assets) issues apparently beyond its reach.

It takes no great leap of imagination to conceive of some disability court judges beginning to resent the persons who come before them and feeling a strong disposition to rule against such persons.

Case By Case Consideration and Development of the Law

Decisions in the federal district courts are made on a case-by-case basis, with more general propositions being formed and refined by *stare decisis*. It should be understood that this sifting and shaping of more general rules out of a variety of cases is fundamental to the judicial process. While uniformity of rules and equality of treatment is the ultimate goal of the judicial process, too early imposition of uniformity may be antithetical to the product. The judicial process, especially the *stare decisis* doctrine, permits the testing of tentative general rules by considering possible applications in a variety of fact situations. This allows reflection upon the rule, on a case-by-case basis, with respect to subtle factual differences. The process may persuade the judge that application of the previously established rule would render an unfair result in the particular case. This, in turn, can result in refinement of the previous rule or establishment of a new rule for application in the newly found circumstances.

In the federal court system, this sifting and shaping of rules under the doctrine of *stare decisis* is refined still further through resolution of differences by supervisory courts. There sometimes arise irreconcilable differences between courts in indistinguishable cases. Each circuit court of appeals resolves these differences within its own circuit, district courts within each circuit being bound by rulings of the courts of appeals. Where circuit courts differ among themselves, the definitive rule is established by the United States Supreme Court. For our purposes, the salient point is that the ultimate rule is typically established after the lower courts have written opinions fully setting out their own thinking, and after a number of cases raising the conflict have been considered.

Such a procedure enhances the likelihood that all pertinent factors will be considered and an optimum rule adopted. Although specialization in disability determinations by a number of judges ostensibly would increase the likelihood of individual determinations and case-by-case development of the law, the disability court may find it difficult to decide cases in the same case-by-case method as is employed in the federal court system.

This risk flows principally from the laudable desire for greater uniformity and efficiency, both of which goals may result in pressure upon the court to develop general and broadly applicable rules at the expense of careful individualized consideration of cases.⁵ To the extent the disability court succumbs to that pressure, the quality of its decisions may be diminished.

In this regard, the chief judge would have broad power to have great impact on the decisionmaking process. For example, in addition to his more general supervisory powers of dividing the disability court into divisions, assigning particular judges to divisions, and prescribing times and places of sessions, he may also provide for review of a decision of any division of the disability court by the entire court. This power, if exercised prematurely, could result in precipitate formulation of overbroad rules preventing the case-by-case development of law which occurs in the federal district courts.

Independent Institutional Perspective

Perhaps the characteristic of the federal courts most germane for comparison with disability courts is the independent perspective of federal court judges:

The Secretary runs a large program and must have rules. Attempting to implement Congress' clear purpose that benefits be provided only to those persons in fact medically disabled, the Secretary establishes hurdles that make it difficult for someone to qualify solely on the basis of a persistent assertion that he is physically incapable of work or able to work only with great pain. Judges, on the other hand, need not consider the program as a whole or its annual budget. Their inquiry is normally focused on an individual claimant, whose story is often sympathetic, whose perseverance in carrying the case so far is evidence of a sincere claim, and who will not be on Easy Street even if he wins the appeal.

⁵ An example may be found in the definitions of disability set out in § 3 of H.R. 3076. As other persons testifying before this Committee have noted, these definitions evince and deserve to increase reliance upon generalized rules and guides, reducing the emphasis upon individualized consideration.

Liebman, *Definition of Disability in Social Security and Supplemental Security Law Drawing the Bounds of Social Welfare Estates*, 89 Harv. L. Rev. 833, 845 (1976).

There may be some question as to the ability of the disability court to remain independent in a normal judicial sense uninfluenced by factors other than whether the individual claimant is entitled to disability payments. For example, disability court judges may feel greater responsibility than do federal district court judges for the financial integrity of the disability trust fund. While it is clear that somebody should be worrying about the trust fund, this should not be the judges who decide individual disability claims. This Congress and HEW are legitimately concerned about the integrity of the trust fund and should make such modifications in the statute and administrative regulations as are necessary to assure that integrity. A judge, on the other hand, has equally as great a responsibility to the rights of the individual claimant as to the administrative agency and should be principally concerned about the eligibility of the claimant under the law without concern about trust funds and other administrative or legislative considerations.

Several factors heighten our concern in this regard. First it may seem at least superficially logical for disability court appointees to be experienced in disability matters. Most experienced persons would have acquired their experience while acting as administrators or hearing examiners, hence may come to the Court with an administrative perspective. Beyond that a President, in making such appointments, might be affected by his own fiscal concerns and appoint conservative judges who he may anticipate, would consider it a judicial responsibility to restrict or control the outflow of disability funds. As the disability court would be an Article I legislative court rather than an Article III constitutional court as are the federal district courts, the vulnerability of the court to outside pressures and influences would be increased. See *Glidden Co. v. Zdanok*, 3700. S. 530 (1962). The judges, we note, would be appointed for ten (10) year terms rather than for life as is the case with federal district court judges, nor should it be assumed that federal administrative agencies would be above attempting to wield influence with the disability court. In recent years, HEW has established a pattern indicating its unwillingness to be guided by federal court decisions until such time as it is absolutely and finally bound by those decisions. To some degree this may be a product of a perceived lack of uniformity which could be remedied by the establishment of a disability court. At the same time, it should be recognized that this failure to implement decisions of the Courts raises a question as to the institutional acceptance by HEW of the normal administrative agency-court relationship and suggests that HEW might be tempted to maximize its influence over the disability court.

Specific Comments Concerning Disability Court Provisions of H.R. 8076

With the above general considerations as background and guides, we make the following specific comments with respect to the H.R. 8076 provisions pertaining to the disability court.

Disability Court Should Be Optional.—As presently written, H.R. 8076 would bar disability claimants from appealing to the district courts with respect to disability determinations. Vesting of sole jurisdiction over disability determinations in the disability court seems neither necessary nor desirable. One analogue to the proposed disability court is the United States Tax Court. Taxpayers who wish to challenge federal tax assessments may litigate the issue either in the tax court or, by paying the assessed amount and seeking refund, in the federal district courts. Similarly, the currently pending legislative proposals for granting United States Magistrates power to make final decisions in federal litigation require consent by all parties as a condition to assignment of a case to a magistrate. Such an option should be available to disability claimants.

Remand Should Be Available for Claimants and the Secretary on a Showing of "Good Cause"

Under H.R. 8076, decisions by the disability court (as is now the case with the federal district courts) are to be based upon the record compiled in the administrative proceedings, with findings of fact in administrative proceedings to be deemed conclusive if supported by substantial evidence. Thus establishment of a full record is crucial. Where litigation has been initiated and it becomes apparent that more information is required, present procedure is for the claimant to seek a remand to complete the record.

Under existing law such a remand can be obtained by the claimant on a showing of "good cause." 42 U.S.C. § 405(g). This provision has been interpreted by the courts to permit a remand in a variety of situations, including: (a) where the claimant has been denied a full and fair hearing; (b) where the hearing examiner has not fully developed a record; (c) where the hearing examiner applied an incorrect legal standard.

The remand clause in H.R. 8076, subparagraph (3) at page 34, permits remand "on a showing that there is new evidence which is material and that there is good cause for the failure to incorporate it into the record in a prior proceeding. . ." The language quoted above could have a harmful impact by creating confusion and raising litigative disputes as to the propriety of a proposed remand. The law concerning remand now is reasonably well developed, with little dispute over the propriety of particular remands. By inserting new language evincing an attempt to limit remands, but by retaining some "good cause" language, the language in question could erode or erase the uniformity which already exists and lead unnecessarily to wasteful disputes and litigation. In any event, where in the judgment of the court there now is "good cause" for remanding, there would seem to be a little public interest in preventing a remand which would serve to broaden the record in order to assure that the decisionmaker will consider all relevant facts. We urge that the "good cause" grounds for remand as presently set forth in U.S.C. § 405(g), be retained.

Interestingly enough, the bill would establish a new "good cause" requirement in order for the Secretary to obtain a remand. This is a desirable provision. Under existing law, also at 42 U.S.C. § 405(g), the court is required, "on motion of the Secretary made before he files his answer," to remand the case to the Secretary. This is so even without any statement in support of the Secretary's motion. H.R. 8076 would change this by requiring a showing of good cause by the Secretary. We support this provision. Under existing law there have been instances in which claimants and their counsel have felt that remands were obtained by the Secretary in order to prevent reversal and to bolster his case in the administrative process, primarily by sending the claimant to an additional consultative physician. A certain amount of cynicism is apparent in such a practice. A decision by the Secretary adverse to the claimant already exists at the time; yet, by seeking remand, the Secretary in effect admits that on the fact of the record it is doubtful that there is substantial evidence to support the adverse decision. A showing of good cause should be required to explain why such a state of facts exists, as a condition to such a remand.

Adversarial Nature of Disability Proceedings Would Be Increased.—H.R. 8076 also provides, in subparagraph (3) at page 34, that upon remand from the disability court, ". . . the claimant and the Secretary shall be parties to the proceeding before the hearing examiner." This is in contrast to present proceedings where remand is made to the Secretary for further action by the Secretary. The bill's provisions in this regard suggests that, as a party, a Secretary would now be represented by an attorney or other representative who would advocate the Secretary's position before the hearing examiner. If this is the case disability claimants, many of whom are now unrepresented, could be placed at a disadvantage either because they are without counsel or because they are required to hire somebody to represent them to protect their rights.

Similarly, the bill, at page 32 § 5(b) provides that, in contrast to the present law, the Secretary would be entitled to obtain judicial review concerning disability determinations, although the administrative procedure has resulted in a ruling favorable to the claimant.

The Committee presumably recognizes that these provisions increase the adversarial nature of disability claim proceedings and expose claimants to greater costs in asserting their rights and extend litigation. The threshold question is whether the advantage of these provisions offset the disadvantages; we trust the Committee will consider that question carefully.

If the Committee decides that it is in the interests of justice to permit the Secretary to obtain such a review, either for purposes of a particular case or to clarify a particular point of law, there nevertheless appears no reason why a particular claimant should be required to bear the expenses of such extended proceeding.

We suggest that if these provisions which would heighten the adversarial nature of disability proceedings are to be retained, provision should be made to offset the added expenses to claimants at least to the extent of providing reimbursement for reasonable attorneys fees necessitated by the additional rights here

given to the Secretary. Such a provision, by giving the disability claimant an opportunity to obtain necessary representation, would perform the added function of upholding justice and the quality of the proceedings. Care must be taken to assure that permission for the Secretary aggressively to advocate rights does not result in the claimant becoming overwhelmed and unable to obtain a fair hearing.

In Some Instances the Disability Court Will Result in a Proliferation of Litigation.—As the bill is presently written, the disability court would have jurisdiction only over issues of disability. In several instances, it is possible that a particular claim may involve questions beyond direct disability issues. This is particularly true in SSI claims where considerations such as financial eligibility, resources, exclusions and the like may be at issue. Similarly, due process issues may arise with respect to procedures employed in SSI and Social Security disability proceedings, and it is unclear whether the disability court would be a proper forum for such issues. Thus, as presently written, the bill could give rise to jurisdictional disputes. In many instances dual appeals, one to the disability court and another to the federal district court, may be necessary.

Page 31 of the bill provides that the Secretary and the chief judge of the disability court would develop regulations concerning the sequence of appeals. Such regulations, however, may not be binding upon the federal district courts. In any event, they could not resolve the jurisdictional issues nor avoid duality of appeals. Thus, in at least some instances, the ironic result would be that this bill, intended to expedite proceedings, would result in a proliferation of issues to be litigated and in increased court congestion.

Disability Court Determinations Should Be Binding on the Social Security Administration

As mentioned previously, the Social Security Administration traditionally has in absence of direct court orders in national class action litigation been slow to implement policies enumerated by courts so as to affect parties not directly involved in the litigation.

The principal justification for the actions of the SSA in this regard has been the absence of uniformity in court decisions. The announced purpose of the establishment of the disability court would be to obtain such uniformity. The benefits of uniformity could be obtained by inserting in the bill a provision requiring the SSA to amend its policy to conform to the requirements of the disability court's decision rendered in litigation which is final and not overruled on appeal.

Confusion May Arise With Respect to the Binding Nature of Circuit Court Decisions.—H.R. 8076 appropriately provides a right of appeal to the circuit courts. This right, of course, is of critical importance. At the same time, the unique nature of the disability courts may cause some difficulties. While federal district courts in a particular jurisdiction are bound by determinations of the circuit court of appeals in that area, neither general principles of law nor any provisions in this bill would be bound by the determinations of the circuit courts of appeals.

The similarity of the language contained in §1124(g), granting exclusive jurisdiction in the U.S. Court of Appeals to review Disability Court decisions with the language in the Internal Revenue Code, 26 U.S.C. §7482, which also gives circuit courts exclusive jurisdiction to review the decisions of the Tax Court, is a foreboding sign. During the past 25 years uncertainty and conflict has clouded the issue as to whether a Tax Court is bound on questions of law by decisions of the appropriate circuit having jurisdiction. The Tax Court, while giving full consideration to the reasoning of the appellate court, has consistently reserved and frequently exercised the power to adhere to its position and reject the appellate court precedent.

In response, courts of appeal have used exceptionally strong language in criticizing the Tax Court's failure to decide cases in accord with previous holdings of the circuit. Eg. *Stacey Mfg. Co. v. Commissioner*, 237 F. 2d 605 (6th Cir. 1956); *Sullivan v. Commissioner*, 241 F. 2d 46 (7th Cir. 1947), aff. on other grounds 356 U.S. 27. Law review articles have flourished, each deploring the confusion existent in the review process of Tax Court decisions and each suggesting different ways to mitigate the uncertainty. See comment, *Heresy in the Hierarchy: Tax Court Rejection of Court of Appeals Precedents*, 57 Colum. L. Rev. 717 (1957); Note, *Tax Court Must Follow Decisions of Courts of Appeals With Appellate Jurisdiction Over Case at Bar*, 70 Harv. L. Rev. 1313 (1957); Tax Court

Wrong In Denying Taxpayer the Rule Layed Down in this Circuit, 8 J. of Tax 288 (1958).

The Tax Court has justified its need for autonomy, as the disability court well could, primarily based upon its responsibility, in view of its national jurisdiction, to promote uniformity in the application of revenue laws. Similarly, the disability court will feel the same responsibility to apply uniform disability determinations.

This Committee should not report out the bill without first clarifying the relationship between disability courts and courts of appeals.

Selection of Judges

Finally, as already discussed, there are substantial concerns relative to the independence of judges and how much they may be influenced or controlled by the Social Security Administration. To guard against making the disability court simply an arm of Social Security Administration policy we suggest that consideration be given to a proviso restricting appointment of individuals previously employed by the Social Security Administration or by the Bureau of Hearings and Appeals.

We appreciate this opportunity to share our views with this Committee.

Dated : July 22, 1977.

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Mr. JACOBS. Thank you, Mr. King.

Gentlemen, do you have an idea of how many disability cases are being handled on an annual basis?

Mr. SWEENEY. In the Federal courts?

Mr. JACOBS. In the aggregate in the United States.

Mr. SWEENEY. Well, the figures I hear most often—well, there are 100,000 hearings being held every year, I believe, around that number.

Mr. JACOBS. Our figures are 50,000 hearings; basically about 10,000 cases.

Mr. SWEENEY. Right.

Mr. JACOBS. And on the question of the Federal court congestion, it occurs to me that just on an average that would run off to 108 cases per district. And if the average district, say, had 3 judges, that would be somewhere around 30 some cases per judge per year.

The reason I mention that is that the Congress is going through the throes now of determining whether additional Federal district judges are required. Federal district judges are pretty expensive animals. Some say the startup is \$1 million a coop and care and feeding runs \$500,000 a year per judge.

The other body set a standard of 400 cases per year per judge to determine whether additional judges are needed in a given district. Now, if you subtract 30 from 400 and get 370, as I understand, the program now at least in the House Judiciary—you are way out of the ball park for consideration, at least by the subcommittee, for a new Federal judge in that district.

I say that to suggest that perhaps these cases are not such an insignificant element to the congestion in the Federal court. I just wondered if either of you would care to comment on the question of appeal.

Is it your position that a trial de novo ought to be held in these disability cases if the person does appeal to the courts, the Federal court system?

Mr. SWEENEY. Mr. Chairman, properly a trial de novo is not held in the district courts; it is done on a substantial evidence—

Mr. JACOBS. I understand. That is not my question. You think that the present kind of appeal is sufficient. You do not think an appeal directly to the court of appeals is sufficient or efficient; is that true?

Mr. SWEENEY. I think that going to the court of appeals is a problem. I think it is not advantageous because the courts of appeals have also had extreme backlogs. We do not necessarily think that is the best route.

I would like to make a point on the social security cases in the district court. Of this volume, although there were 10,000 cases last year, about 5,000 were black lung cases. And the black lung cases are disappearing from the Federal courts and eventually will be out of the Federal district courts completely.

Second, the district court congestion on social security cases has been confined primarily to seven districts, and I say that to suggest that that problem is one of a localized nature and, once again, that has been primarily—I think six district courts are handling 48 percent of the social security cases filed, so that would suggest it is a localized problem, not one needing national attention.

One thing on the expense factor—there is a Senate study of this in a subcommittee of the Judiciary Committee about magistrates, Federal magistrates having greater jurisdiction to handle these types of cases. As far as the expense factor goes, it is felt by the proponents of this bill that there is a cheaper way of handling these types of cases. We are not suggesting that ultimately an administrative tribunal of some type to handle general administrative appeals from Federal agencies is a bad idea. I think it has a lot of merit but our basic position is that there shouldn't be a rush to judgment on an isolated administrative tribunal such as the disability court would be.

Mr. JACOBS. My understanding is that the proposed legislation does contemplate stare decisis with respect to the decisions in the proposed court. Is that your understanding?

Mr. SWEENEY. That is my understanding of what it is intended to do. There is some question however. I have seen in the literature on article I tribunals some question as to whether an article I tribunal, which in effect may be nothing more than an administrative agency, can bind another administrative agency such as HEW and, I think, HEW is going to have severe questions about their ability to implement and control policies when these independent nonarticle III other type administrative courts are deciding the policy for this agency.

I just raise these as questions. I don't know what the answers are.

Mr. JACOBS. I appreciate your raising the question because if that is the intent of the committee that could be specified in the statute in any case.

On one other point—Mr. King, then I noted you wanted to comment further. In fact, why don't you do that?

Mr. KING. The "30 out of the 400 caseload" test can be misleading. There are cases and then there are cases. The 30 cases, about 7½ percent of the number of cases of a typical Federal judge—using the figures you suggest—workloads, may not really constitute anything like that percentage of the judges actual workload. Some types of cases require much more court time than others, and that needs to be considered.

Second, on the question of stare decisis, the point that we tried to make in our statement is that, while stare decisis normally evolves out of a case-by-case process in which rules and their applications are scrutinized very closely, there may be pressure upon disability court judges to adhere to broader, more uniform, more apparently uniform, but sometimes unfair, application of rules because of the article I nature of the tribunal.

Mr. JACOBS. Finally, as far as I am concerned, the question of who might be appointed to these court decisions—what would you gentlemen think about a requirement of say, general practice of law for a certain period of time as eligibility for such appointments?

Mr. SWEENEY. My feeling is that that would help out somewhat. I still think that there are automatic problems with the court. It is so highly specialized that you are asking individuals—if you want to get top grade, high quality individuals, you are saying to them, we want you to spend the next 10 years, which is the tenure of appointment, handling nothing but disability issues.

Now, Mr. Chairman, I have spent the last 3 or 4 years of my life handling about 25 percent of my practice in the disability area. I am ready to move on a little bit from the disability area. If you've seen one back case, you've seen them all. And I think it is the same with practice in the personal injury or other areas involving medical questions.

If we are talking about a high quality court, one that the American people would be proud to have adjudicating these very important cases in the social security system, I am not sure we can do it in this highly specialized nature of saying to these judges, you do just one type of case. I would note that the Bork report, from the Justice Department, in January of 1977 indicated that if there is to be an administrative tribunal it should be a generalized tribunal having a multitude of appeals from administrative agencies, perhaps including social security in order to get the type of judge that would be attracted to such a court, a high quality type of judge.

Mr. JACOBS. Thank you.

Mr. Gephardt?

Mr. GEPHARDT. No questions.

Mr. JACOBS. Ms. Keys?

Ms. KEYS. No questions.

Mr. JACOBS. We thank you for your contribution to the committee, gentlemen.

Mr. SWEENEY. Thank you.

[The following was submitted for the record:]

STATEMENT OF THE NATIONAL BAR ASSOCIATION ADMINISTRATIVE LAW SECTION

POSITION OF NATIONAL BAR ASSOCIATION WITH RESPECT TO THE PROPOSED CHANGES IN THE SOCIAL SECURITY ADMINISTRATION HEARING SYSTEM.

The National Bar Association (hereinafter referred to as the NBA) goes on record in favor of the retention of the present method of administrative hearings with some definite modifications outlined below.

INTRODUCTION

In very general terms, Social Security administrative hearings are conducted in accordance with 20 CFR #404.927, which provides as follows:

401.927 Conduct of hearing.

Hearings shall be open to the parties and to such other persons as the Administrative Law Judge deems necessary and proper. The Administrative Law Judge shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the Administrative Law Judge believes that there is relevant and material evidence available which has not been presented at the hearing, the Administrative Law Judge may adjourn the hearing or, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedure at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the Administrative Law Judge and of such nature as to afford the parties a reasonable opportunity for a fair hearing.

There are two principal objectives in a hearing. The first is to create an adequate record—complete, clear and accurate—upon which to base a decision. The second is to provide all parties a full and fair hearing.

An adequate record is needed for possible Council review and also for a proper judicial review. To accomplish these two objectives, the hearing officer must provide the parties an opportunity to appear at the hearing in person or by representative, unless personal appearance is waived; to examine any and all evidence upon which the hearing officer's decision will be based and to comment on, object to, or refute all such evidence; and to present their contentions and the claimant and/or party will have testified fully to facts within his knowledge. The hearing officer will not have created a proper and adequate record unless the claimant and/or party will have testified fully to facts within his knowledge and to have produced evidence reasonably within his control, or to have had his attention specifically called to the pertinency of such testimony or evidence and he has not availed himself of the opportunity to produce it. Nor will the record be complete otherwise until the hearing officer has made reasonable efforts to secure available "relevant and material evidence" not within the control of the claimant or parties.

The proceeding is *ex parte* in the sense that the Social Security Administration, with which a claim is asserted, is never a party to the hearing. It retains this *ex parte* character even if there are adverse parties in the case since their mutually opposed claims are both made with the Administration which is not a party. The hearing officer, on behalf of the Secretary, is charged with the duty of (1) attempting to develop by means of the hearing process the material evidence in the case, (2) making findings of fact, and (3) stating conclusions of law based on those findings under the law which govern the case.

While a person's hearing enables that person to marshal before the hearing officer his contentions and whatever evidence he has in support of them, the regulations impose on the hearing officer the correlative responsibility for requesting, directing the production of or otherwise adducing any other relevant evidence of which he may learn, whether favorable or unfavorable, to those contentions. The hearing officer's responsibility is not alone to the parties to the hearing, although he must protect their rightful interests, nor is it to the claims processing bureau as an advocate in defense of its adjudicative action. Rather, the hearing officer's obligation is to assure the correct administration of the Act, under the applicable regulations.

The concept of "fair hearing" beyond those aspects which relate to a reasonable opportunity to attend and to the issuance of proper notice of the hearing to all who should be parties, assumes the right of every party to be adequately apprised of the issues, to be informed of all the evidence both for and against his interests, and to participate fully by presenting to the hearing officer:

(1) relevant noncumulative evidence, oral or documentary, which the party believes tends to prove his allegations; and

(2) argument, oral or written, on

(a) the factual inferences and resultant findings warranted by the entire record, and

(b) the written conclusions required by applicable law.

The hearing procedure is designed to build an orderly and comprehensive record of the evidence of the case as mentioned above. It should present, so far as possible, a clear, intelligible account of the material facts in such a way that one who merely reads the record, without the hearing officer's opportunity to observe the demeanor of witnesses, should be satisfied with the record. To

accomplish this result, skill and objectivity in examining witnesses are of paramount importance. The oral hearing necessarily introduces the factor of witnesses' demeanor, and it is entirely proper that the hearing officer should take this into account in appraising the credibility of their testimony.

The responsibilities of the hearing officer in the Bureau of Hearings and Appeals are different in one significant aspect from those of hearing officers in regulatory agencies. In the usual hearing process of the regulatory agency, the presence of counsel for the agency and for the respondent presumptively assures an adequate development of the record in order to present the facts and law from the point of each party. Through briefs or otherwise, the attention of the hearing officer in a regulatory agency is invited by opposing counsel to pertinent statutory and regulatory provisions and relevant court decisions. In appeals by individuals under Title XVIII and Title II, the Department is not represented in the hearing and the individual claimant may or may not be represented by counsel.

The general hearing procedure outlined above was sustained in *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971). In *Perales*, supra, it was held that in the case of an administrative proceeding before a hearing officer to establish entitlement to Title II benefits, such a proceeding was non-adversary. It would appear that the same rule would apply in Medicare cases.

1. APPLICATION OF FEDERAL ADMINISTRATIVE PROCEDURE ACT

The NBA concurs with the parts of H.R. 5064 and H.R. 5072 making Sections 554-557 of Title 5, U.S.C.A. (Federal Administrative Procedure Act) applicable to administrative hearings in Social Security claims. There does not appear to be any rational basis for exempting Social Security hearing from the APA, since most administrative agencies are controlled to some extent by the APA. The NBA realizes that some parts of the APA overlap with some procedural provisions of the Social Security Act. Nevertheless, it feels that an agency that touches the lives of more individual citizens than any other agency should be bound by a time-tested Act such as the APA. The National Bar Association does not believe that recent Supreme Court decisions that diminished the effect of the APA on Social Security hearing will inure to the good of the common ordinary persons appearing in such hearings.

2. INDEPENDENCE OF HEARING OFFICER

The NBA violently opposes the recent attempts to in effect exert agency control over the independence of the Administrative Law Judges in their decision-making role. The NBA also opposes any attempt to enact or carry out any so-called "peer review", especially by lay persons who are in no way the peer of the Administrative Law Judges making the decision. The NBA does however concur with a part of H.R. 5064 that establishes an Immediate Review Board composed of experienced Administrative Law Judges who have been appointed under Section 3105, Title 5 of U.S.C.A. Any other screening, testing or review of an Administrative Law Judge's decision should be forbidden, except by way of judicial review.

3. SELECTION OF NEW HEARING OFFICERS

The present selection procedures employed by the U.S. Civil Service Commission involves a procedure wherein an applicant submits his application plus a number of cases and legal involvement indicating that he has had the prerequisite years of legal experience. Of course such applicant is required to be a graduate of a recognized law school and a member in good standing of a state Bar. He also supplies a number of references numbering from 20 to 25. If it appears that the applicant has had at least 7 years of legal experience on a high enough level, questionnaires are sent to selected persons, both on and off the list supplied by the applicant. The responses are graded, and if the claimant attains a sufficient grade, then he or she must undergo a written examination lasting about 1 day. Subsequently, the claimant must undergo an oral interview. Also, certain background investigating is done. Finally the claimant is given a grade. This grade must be at least 80 before the applicant is placed on the register. Once placed on the register, they are supposed to be selected generally on a numerical basis.

The NBA believes that this selection procedure is inadequate for the following reasons:

A. The testing procedure is too subjective. The questionnaires sent out are answered for the most part by the use of a check mark in one of 5 boxes. Even so, these responses only represent what other persons think about the applicant.

An attorney with at least 7 years standing as a practicing attorney has a much more reliable professional record upon which to be judged. For example, his brief involving his most important cases could be analyzed in a proper context. Also, the transcripts of some high-level case could be studied. These types of investigations would afford a more objective evaluation of the applicant's professional knowledge and skills.

Special Note.—This testing and evaluation should be only done by a panel of experienced trial attorneys and judges. Obviously no lay person or inexperienced analyst would fully understand the full meaning of statements of law, motions, objections, interrogation of witnesses, cross-examination of witnesses, and other complicated and involved legal proceedings. The NBA insists that this panel be representative, including Blacks and other minorities.

B. The present testing procedure is no more than a screening device, with little testing in relationship to the job that the applicant is to perform.

C. The NBA has direct evidence that the written examination and the oral interview in many cases, do not even touch upon the body of law that an applicant should know in order to function as an effective Administrative Law Judge. It is nothing more than irrelevant testing outlawed in *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).

D. *Selection of a higher percentage of minority hearing officers.*—The above described selection system, together what the NBA believes to be outright racial discrimination, has led to a minuscule number of Black hearing officers being appointed as Administrative Law Judges. As best can be determined, there are currently some 600 Administrative Law Judges on duty with the Social Security Administration, Bureau of Hearings and Appeals. A representative number of Black Judges would amount to about 60. However, as best that can be determined there are less than 20 Black Judges on duty with the Social Security Administration. The NBA has direct evidence from highly qualified Black attorneys and Judges in various parts of the country that were rejected when they applied under the current Civil Service selection system. As members of the NBA, we are deeply disturbed by this state of affairs, and demand that corrective legislation be enacted to correct this invidious discrimination.

4. REMAND AUTHORITY OF ADMINISTRATION LAW JUDGE

The NBA is in substantial accord with the remand authority granted to the Administrative Law Judge contained in H.R. 5072. However, the NBA believes that in addition to the causes for remand outlined in the aforementioned bill, an Administrative Law Judge should be granted general remand authority. After all, these judges are experienced attorneys, if they should be trusted to use sound judicial discretion when remanding a case.

5. FUTURE CLOSED PERIOD OF DISABILITY

Under current regulations, an Administrative Law Judge may only grant a closed period of disability on or before the date of his or her decision. The law and regulations should be amended so that an Administrative Law Judge could grant a closed period of disability, when based on sound expert medical evidence. For example, a doctor, by use of healing chart data, and his own expert medical judgment, can often forecast how long it would be before the claimant could regain full use of his broken leg. At the end of this period, the claimant, if not recovered, could request a supplemental hearing on the matter.

6. ELIMINATION OF QUOTAS

The NBA has it on good authority that the Bureau of Hearings and Appeals has in effect established a 26 case per month quota for each Administrative Law Judge. The NBA strenuously objects to the establishment of any quota upon an Administrative Law Judge for the following reasons:

1. Such a "body count" in case disposition would be unfair to the claimant since his or her case is bound to obtain less than a complete evaluation to which every claimant is entitled. This could result in the denial of benefits to a claimant who may be rightly entitled to same.

2. Such a demand on an Administrative Law Judge would be unfair to the U.S. Government and the citizens thereof since this practice would tend in some case, to grant claimants benefits, where they would not otherwise be entitled to receive same.

7. REPRESENTATION AT HEARINGS

The NBA is in general accord with the provisions of H.R. 5064 that provides for the appointment of attorneys at no lower than GS-13 to represent the Secretary in administrative hearing proceedings. However, the NBA strenuously objects to the selection procedure outlined in H.R. 5064 since this would permit the U.S. Civil Service Commission to engage in the same type of discrimination complained about in Section 3, *supra*. The NBA feels that essentially the same type of selection procedure suggested in Section 3, *supra*, should be employed.

Claimant's Right To Be Represented by Counsel

Naturally, the NBA believes that claimant not only has a right to be represented by counsel at an administrative hearing but should be so represented. However, the NBA opposes that part of H.R. 5064, providing as follows:

APPEALS

SEC. 10. Section 205(b) of such Act is amended by redesignating the text thereof subsection (1), and by adding at the end of such subsection the following new subsections:

"(2) Within fifteen days after receipt of a request for counsel from a claimant as described in section 221(c)(4), the Secretary shall designate and assign to such claimant an attorney employed by the Federal Government under the circumstances described in subsection (9) hereof, for the purpose of assisting the claimant to contest the reconsideration decision, including appearance at any hearing held by the Secretary pertaining thereto.

The NBA believes when at all possible, a claimant should be represented by a private attorney of his or her own choosing. It should be explained to claimant that an attorney could be paid out of the past-due benefits. In cases where private attorneys cannot be obtained, the NBA suggests the following procedures be followed:

1. In cities of communities where the Legal Service Corporation has an operating unit, legal aid should be used as a clearing house. By that we mean, the legal aid would keep a roster of local attorneys who had previously indicated that they would accept Social Security clients. In that case, such claimant should be referred to these attorneys on a rotating basis. It is recommended that the Congress add to the Legal Services Corporation's appropriation to cover this added service.

In cases where an attorney cannot be obtained, the legal aid office in question should have an attorney or attorneys to handle the case.

In outlying areas where no legal aid unit is functional, the NBA recommends that the following provisions be enacted into law:

a. A local attorney be appointed to represent the claimant who will be paid 80 percent of the local bar rates by the U.S. Government. This fee would be fixed by the Administrative Law judge, but in no case could the fee exceed one-fourth of the past due benefits. In the case of a recovery by the claimant, the allowed fee would be deducted from his or her past due benefits.

Only in the case of non-recovery, the attorney should be paid by the U.S. Government.

8. ATTORNEY FEES

The NBA believes that the present procedure for the allowance of attorney fees is unduly complicated, slow, and unjust and in the end, discourages attorneys from representing claimants in Social Security proceedings.

Discrimination Against Attorneys

The attorney fee limitations provisions of the Act would appear to discriminate against attorneys when compared to physicians and other professionals supplying medical services. The very first section of the Medicare Act prohibits Federal interference with doctors in their doctor-patient relationship. However, there is a rigid statutory requirement pertaining to lawyer-client relationship with respect to attorney fees. A maximum attorney fee is prescribed in the Act, but there is no comparable limitation on a doctor's fee. There does not appear to be

any rational basis for this form of discrimination since it is obvious that hospital and doctor's fees have placed a severe strain on the Medicare funds. No such thing has happened in the case of attorney fees since such fees are paid out of the claimant's part of the recovery and not out of the Trust Fund.

The NBA goes on record for a system that would place the sole responsibility for fixing attorney fees under 42 U.S.C.A. 406(a) in the hands of the Administrative Law Judge who made the decision, if available. Currently, the Administrative Law Judge who decided the case can only authorize a fee up to \$1,500. He or she can recommend a higher fee to the Appeals Council. This is not rational, since the party who heard the case is more familiar with the services furnished by the attorney than anyone else. According to statement made at the time H.R. 5064 was introduced, each disability case is worth about \$56,000. It is irrational to state in effect that an Administrative Law Judge can pass on hundreds of claims each year where the disputed amount is \$56,000, and that same hearing officer cannot pass on a \$1,600 attorney fee claim for example.

The NBA believes that the Attorney Fee Section in the Bureau of Hearings and Appeals should be abolished, and to only allow review of attorney fees claims by the Review Board mentioned in H.R. 5064 and of course a judicial review of same under 42 U.S.C.A. 405(g) and the APA, if there is an aggrieved party. In fixing an attorney fee, the NBA takes the position that the contingency of the case should be taken into account, as stated in *McKittrick v. Gardner*, 378 F. 2d 872 (1967 4th Cir.). Therefore the hourly billing practices would not be applicable.

Special Note on Payment of Attorney Fees

The NBA believes that neighborhood lawyers should be encouraged to represent Social Security claimant, as expressed in *McKittrick*, supra. The NBA also believes that the low-allowance in some attorney fee grants and the exceedingly slow payment of a fees allowed, discourage many neighborhood attorneys from accepting Social Security cases.

A small neighborhood law office usually operates on a month-to-month basis. It simply cannot wait months and in some cases a year to receive a fee that it has earned. In order to expedite the payment of approved attorney fees, the NBA recommends that the following procedures be enacted:

1. The Administrative Law Judge should determine at least by the time of the hearing if the attorney has a retainer agreement with the claimant. If such a typical agreement exist and it is the usual one-fourth past-due benefit type of agreement, then the ALJ should ask the claimant on the record if he agrees with arrangement. If the claimant says yes, then that would enable the ALJ, if there is an award, to promptly fix a reasonable fee as soon as he obtains the award letter and the amount of funds withheld from the claimant's award.

2. The ALJ's attorney fee allowance should go immediately to the disbursing agency. There is no need to submit the fee allowance statement to the claimant since he or she has already agreed to the fee allowance. There is no need for any further review of this award since the claimant has previously agreed to an attorney fee not to exceed one-fourth of the past-due benefits.

9. JUDICIAL REVIEW

The NBA strongly opposes any effort to abolish, curtail, or any way diminish judicial review of Social Security cases. It is unalterable opposed to the adoption of a Veterans' Administration type of hearing wherein no judicial review is allowed. The VA nonjudicial review practice is a disgrace to the memory of U.S. Servicemen who gave so much for the defense of this Country. A pertinent part of H.R. 5064 provides as follows:

(8) The administrative law judge shall base his decision on the entire record, and shall, on the basis of such record and the evidence adduced at the hearing, affirm, modify, or reverse the reconsideration determination. The decision of the administrative law judge shall become the final decision of the Secretary, unless changed by an intermediate review board established pursuant to subsection (b) (10).

If this provision is intended to prevent judicial review of an administrative decision, the NBA strongly opposes it. In short, the NBA believes that a vigorous and active judicial review is absolutely necessary where an administrative agency in dispensing mass-justice. These proceedings involve thousands of ordinary citizens, who would be at the mercy of some administrative agency if judicial review were not available.

The NBA respectfully request that one of its representatives be granted an oral presentation before your study group at the earliest possible date.

Respectfully submitted.

Mr. JACOBS. The next witness will be from the Health Insurance Association of America, Mr. Charles Soule, chairman of the Disability Insurance Subcommittee and also vice president of the Paul Revere Life Insurance Co.

He is accompanied by Mr. Gerald Parker, vice president for Guardian Life Insurance Co. of New York.

Gentlemen, since our able Chair has brought your presence to our attention you are especially welcomed to our committee, Chairman Burke asks that I personally, on his behalf, welcome you to the committee and to express his regrets that his illness has prevented his being here. If you know Jim Burke, you know it took an awful lot to prevent him from greeting friends.

STATEMENT OF CHARLES SOULE, CHAIRMAN, DISABILITY INSURANCE SUBCOMMITTEE, HEALTH INSURANCE ASSOCIATION OF AMERICA, AND VICE PRESIDENT, PAUL REVERE LIFE INSURANCE CO.; ACCOMPANIED BY GERALD S. PARKER, VICE PRESIDENT, GUARDIAN LIFE INSURANCE CO. OF NEW YORK

Mr. SOULE. I appreciate your mentioning Mr. Burke's comments to me, and please wish him well.

Mr. JACOBS. We expect him back on the theory that you can't keep a good man down.

Mr. SOULE. You have a copy of our full statement and we will try fairly quickly to summarize.

Mr. Parker and myself testified before this committee in 1976. We represent more than 300 insurance companies writing health insurance in the United States.

In our opinion, the most important single factor contributing to the present crisis results from the 1972 legislation which created automatic increases in social security benefit levels that go far beyond the original and basic purpose of the social security program. No longer is it accurate to describe the program by its original purpose of providing a "floor of coverage." As the subcommittee knows, the present level of coverage provides benefits that can, in many instances, actually exceed an individual's previous net earnings after taxes.

The administration's proposal does recommend decoupling, which will help correct this situation, but it does not address itself to the urgency of this problem. And its decoupling formula still permits excessive replacement ratios.

Because the administration's proposal, and others, do not adequately address themselves to controlling the level of benefits, but rely too heavily on various methods of generating more revenue to support the social security program, they cannot solve the problem. They can only postpone it a few years. Neither the administration's proposal, nor others, give enough attention to areas of controlling the current level of excessive benefits.

Exhibits A, through D of our submission show past, current, and projected future maximum family benefit levels for disability income at various incomes and ages. For comparative purposes we have shown the level of benefits as a percent of "take home pay" or net spendable income.

Previous testimony before this subcommittee, and substantial insurance industry data, show a direct relationship between the proportion of income covered and the incidence and duration of disability. The insurance industry has found that 80 percent of "take home pay" is the maximum "safe" level to insure without incurring adverse experience.

Exhibit A, attached, for ages 29 or under shows that overinsurance, where more than 80 percent of "take-home pay" is paid out in disability benefits, is present currently for all gross earnings less than \$18,000 of annual gross income. Where in 1970 the maximum family benefits amounted to only 35 percent of "take-home pay" at \$18,000 of income, this figure will rise to 128 percent of "take-home pay" by 1981. The incentive to return to work is eliminated under such circumstances.

In order to demonstrate the urgency of the need for decoupling, exhibit E displays the same data from the previous four exhibits, but simply states the income replacement ratio as it relates to gross income based on the year of disability. Without the needed changes in the system, and particularly the automatic cost-of-living factors, under our traditional industry standards of insuring no more than 80 percent of "take-home pay," over-insurance will exist for all individuals who become disabled in 1981 with incomes less than \$28,000 at ages 35 to 45.

Under these circumstances, no actuarial assumptions for the cost estimates of the program can be developed that will provide reliable and accurate predictions of cost.

The insurance industry's disability income experience demonstrates that the ratios of actual to expected claims increase sharply as the percentage of income insured becomes larger. Exhibit F is taken from the Transactions of The Society of Actuaries and is a study of group insurance morbidity experience.

This chart indicates that when more than 50 percent of gross income is insured, the ratio of actual to expected claims in each instance exceeds 100 percent, and if the gross amount insured is more than 70 percent the actual raises to more than 200 percent.

Mr. Chairman, we have reviewed the 1977 annual report of the Board of Trustees of the OASDI Trust Funds, the proposals made by the Carter administration for amendments to the Social Security Act, and your bill—H.R. 8076. We would like to offer our views on all of the proposals made in these documents.

With respect to the report of the Trustees, the basic problem is abundantly clear. Congress must either increase taxes, reduce benefits, or defer the ages at which benefits become payable, or perhaps some part of all three of these. There is no other way to place the Social Security Program on a sound basis. There is no escape from these choices.

In our view, the most essential and urgent action which must be taken, and taken in 1977, is the enactment of decoupling legislation

without provision for a transition period for disability and survivor cases along the lines recommended by the Carter administration. We believe the formula for determining the primary insurance amount under this decoupling proposal should not exceed 30 percent for incomes in excess of \$15,000.

In addition, it is not financially sound ever to pay disability benefits in excess of 80 percent of "take-home pay."

We urge very strongly that an additional cap should be included in the formula so that the benefit available to a disabled worker and his dependent spouse and children from social security and Workmen's Compensation can never exceed 65 percent of his earnings at the time the total disability commences. We recognize that attempting to define the benefit levels in terms of after-tax net income would be impractical, but we believe that 65 percent of gross earnings will be a reasonable appropriation of 80 percent of net in terms of gross earnings.

We believe that these changes in the benefit formula would do more to reduce the excessive claim rates and the deterioration in the claim termination rates than all the other proposals that have been made, combined. They would do this without inflicting undue hardship on any truly totally disabled beneficiaries.

In regard to other administration proposals, we support the proposal to increase the self-employment tax rate from its present level of 7 percent to 7½ percent. While we do not object to the proposal to advance the tax increase now scheduled for the year 2011 to 1985 and 1990, we believe it is clearly insufficient, and we recommend an immediate increase of 0.5 percent in the tax rate on both the employees and employers.

We support the new test for dependent's benefits that would reduce the revenue loss resulting from the recent Supreme Court decision by imposing a dependency test for all dependent benefits.

As previously mentioned, we support the proposal for decoupling in principle, and in particular the proposal that there be no transition period for disability or survivor benefits.

We oppose the proposal to enact countercyclical dependence upon general revenue financing and the proposal that is dependent upon that which would reduce the reserve level of the trust funds to 33 percent of a year's outlay.

We oppose the proposal to tax employers on the entire earnings of employees on the ground that this is merely a euphemism for an increase in the employer income tax.

We oppose the proposal to increase the amount of the employee wage subject to tax above the amounts scheduled under present law on the ground that these increases will result in automatic increases in the benefit formula, which is already too high.

We oppose the shifting to OASDI of one-half of the 0.2 percent increase in the medicare tax rate scheduled for 1978.

In regard to Representative Burke's bill, we are impressed by the thought that has gone into the development of the proposals for modifying the definition of total disability, but we have grave doubts about the efficacy of the concept of disability applicable after age 50.

We continue to strongly support the need for more explicit administrative guidelines for the social security disability income system. In addition, the split Federal and State responsibility for the pro-

gram tends to limit efficiency and cause inequity between State jurisdictions. We believe the Federal authority to administer and direct the program should take precedence over any State authority, and support the recommendation in H.R. 8076 to strengthen the Secretary of HEW's authority in this area.

Mr. Chairman, the present social security disability income program discourages rehabilitation and encourages an individual to malingering. Indeed, the current social security disability income program has characteristics and shortcomings that increasingly make it take on the appearance of unemployment and retirement coverage, which removes it from the effective control and management of disability coverage. Overinsurance, which is the basic reason for work disincentives, must be effectively and clearly controlled and eliminated in any new legislation. We believe the 65 percent of gross earned income maximum benefit mentioned in our testimony is the only logical way to control this problem.

We stand ready to be of assistance to you and your staff in any way insurance industry professionals may be of help. I thank you for the opportunity to express our concerns and suggestions on this subject.

[The prepared statement follows:]

STATEMENT OF THE HEALTH INSURANCE ASSOCIATION OF AMERICA

Mr. Chairman, and members of the Subcommittee, my name is Charles E. Soule, and I am a Vice President of The Paul Revere Life Insurance Company of Worcester, Massachusetts. I am appearing here today with Mr. Gerald S. Parker, Vice President of The Guardian Life Insurance Company of New York, on behalf of the Health Insurance Association of America. We testified before this Subcommittee in 1976 and represent an association of more than 300 insurance companies writing health insurance in the United States.

We appreciate the opportunity to again appear before this Subcommittee for two reasons. First, we believe that our experience in the highly technical disability income field can be of help to you. Secondly, your recommendations will directly affect the private insurance industry. Our purpose today is to update some figures which were given to you in our earlier testimony, to comment on the Chairman's and the Administration's recent proposal and also to emphasize some continuing areas of concern.

Testimony before this Subcommittee has asserted that the short term Social Security financial crisis is primarily a result of the recent recession and unemployment. True, the economic situation does affect disability. True, it affects the level of tax revenues. But in our opinion, the largest *single* factor contributing to the present crisis results from the 1972 legislation which created automatic increases in Social Security Benefit levels that go far beyond the original and basic purpose of the Social Security Program.

No longer is it accurate to describe the program by its original purpose of providing a "floor of coverage". As the Subcommittee knows, the present level of coverage provides benefits that can, in many instances, actually exceed an individual's previous net earnings after taxes. A disabled individual at age 29 with an income of \$14,000 before disability may, under the current disability income benefit structure, receive benefits in excess of his "take home pay". Without immediate changes in the system, by the year 1981 an age 29 year old with an income of \$28,000 before disability will receive benefits in excess of his "take home pay". The Administration's proposal does recommend decoupling, which will help correct this situation, but it does not address itself to the urgency of this problem. And its decoupling formula still permits excessive replacement ratios.

Because the Administration's proposal, and others, do not adequately address themselves to controlling the level of benefits, but rely too heavily on various methods of generating more revenue to support the Social Security program, they cannot solve the problem. They can only postpone it a few years. The need for substantial increases in new revenue for the system in the short term results

largely from the fact that the level of benefits has far outpaced projections, and as I have just indicated, in many areas goes beyond the point of reasonable coverage. Neither the Administration's proposal, nor others, give enough attention to areas of controlling the current level of excessive benefits.

Exhibits A, B, C, and D show past, current, and projected future maximum family benefit for disability income at various incomes and ages. For comparative purposes we have shown the level of benefits as a percent of "take home pay" or net spendable income. In each situation "take home pay" was derived by subtracting Federal Withholding taxes and Social Security taxes from gross income.

Previous testimony before this Subcommittee, and substantial insurance industry data, show a direct relationship between the proportion of income covered and the incidence and duration of disability. The insurance industry has found that 80 percent of "take home pay" is the maximum "safe" level to insure without incurring adverse experience. Indeed, many industry professionals believe 80 percent to be too high at certain incomes and ages. It should be pointed out that the attached Exhibits make no adjustment for State taxes, which would of course reduce the "take home pay" for each income to an even lower level.

Exhibit A, attached, for ages 29 or under shows that overinsurance, where more than 80 percent of "take home pay" is paid out in disability benefits, is present currently for all gross earnings less than \$18,000 of annual gross income. Where in 1970 the maximum family benefits amounted to only 35 percent of "take home pay" at \$18,000 of income, this figure will rise to 128 percent of "take home pay" by 1981. The incentive to return to work is eliminated under such circumstances, and the serious impact of increased benefits paid under the system can be seen by looking at the Social Security Administration's own figures.

In order to demonstrate the urgency of the need for decoupling, Exhibit E displays the same data from the previous four Exhibits, but simply states the income replacement ratio as it relates to gross income based on the year of disability. Without the needed changes in the system, and particularly the automatic cost-of-living factors, under our traditional industry standards of insuring no more than 80 percent of "take home pay", overinsurance will exist for all individuals who become disabled in 1981 with incomes less than \$28,000 at ages below 35, and for incomes below \$22,000 for ages 35 to 45. It is significant to note that at age 29 for all incomes in Exhibit E, in 1981 the level of disability benefits will not only exceed 80 percent of "take home pay", but will actually be greater than the individual's "take home pay". Under these circumstances, no actuarial assumptions for the cost estimates of the program can be developed that will provide reliable and accurate predictions of cost.

The insurance industry's disability income experience demonstrates that the ratios of actual to expected claims increase sharply as the percentage of income insured becomes larger. Exhibit F is taken from the Transactions of The Society of Actuaries and is a study of group insurance morbidity experience. This chart indicates that when more than 50 percent of gross income is insured, the ratio of actual to expected claims in each instance exceeds 100 percent, and if the gross amount insured is more than 70 percent the actual to expected ratio is more than 200 percent. The 80 percent of "take home pay" referred to in my previous remarks and Exhibits roughly approximates 65 percent of gross earned income, and clearly to go beyond this point will cause serious claim problems.

Like the Social Security disability program, our industry continues to experience serious underwriting losses, and our level of claim costs continues to run at rates never experienced before. In every year since 1972 we have experienced increased losses, reaching a level in excess of \$68 million in 1976 for noncancelable disability income coverage. The attached chart, Exhibit G, shows these figures for the past ten years. We believe that the serious overinsurance problem caused by governmental coverages, and particularly Social Security Disability Benefits, is a major contributor to this poor experience. Several disability income companies have withdrawn from the marketplace during the past two years, and other companies have ceased to write coverage at incomes below \$15,000, since Social Security Disability Income benefit levels have essentially eliminated this market for private insurance.

With the current automatic cost-of-living increases within the Social Security system, there is in fact little room for private coverage below incomes of \$20,000, and our projections indicate this limiting figure will rise to more than \$30,000 in 1981. Indeed, using current projections, the entire market will be effectively eliminated within ten years.

Mr. Chairman we have reviewed the 1977 annual report of the Board of Trustees of the OASDI Trust Funds, the proposals made by the Carter Administration for amendments to the Social Security Act, and your bill—H.R. 8076. We should like to offer our views on all of the proposals made in these documents.

With respect to the report of the Trustees, the basic problem is abundantly clear. Congress must either increase taxes, reduce benefits, or defer the ages at which benefits become payable, or perhaps some part of all three of these. There is no other way to place the Social Security program on a sound basis. There is no escape from these choices. Congress may be able to escape for two or three years by the shifting of funds back and forth between various trust funds, but this will only postpone the inevitable and make it worse when it arrives.

In our view, the most essential and urgent action which must be taken, and taken in 1977, is the enactment of decoupling legislation without provision for a transition period for disability and survivor cases along the lines recommended by the Carter Administration. We believe the formula for determining the primary insurance amount under this decoupling proposal should not exceed 30 percent for incomes in excess of \$15,000.

In addition, it is not financially sound ever to pay disability benefits in excess of 80 percent of "take home pay". We urge very strongly that an additional cap should be included in the formula so that the benefit available to a disabled worker and his dependent spouse and children from Social Security and Workers' Compensation can never exceed 65 percent of his earnings at the time the total disability commences. We recognize that attempting to define the benefit levels in terms of after-tax income would be impractical, but we believe that 65 percent of gross earnings will be a reasonable approximation of 80 percent of net in terms of gross earnings.

We suggest defining the pre-disability earnings as the disabled beneficiary's regular straight time rate of earnings on the date of onset of disability or his average rate of actual earnings during the two years preceding the onset date, whichever is the greater. This formula treats fairly both the beneficiary who has recently obtained work at a higher wage or salary level and the one who has suffered a recent reduction of earnings through unemployment or change of employment on a disadvantageous basis, or who has a history of sustained overtime earnings.

We believe that these changes in the benefit formula would do more to reduce the excessive claim rates and the deterioration in the claim termination rates than all the other proposals that have been made, combined. They would do this without inflicting undue hardship on any truly totally disabled beneficiaries. In this connection, we recognize that there are some persons already drawing disability benefits that would exceed this formula. We would propose that their benefits be frozen and not increased by cost-of-living improvements until the sum of the current benefits and the cost-of-living increases would reach the amounts that would have been available to such beneficiaries under the new formula.

As to this and all other recommendations, I should like to briefly summarize our Associations' positions on the proposals of the Carter Administration and on H.R. 8076.

THE ADMINISTRATION PROPOSALS

(1) We support the proposal to increase the self-employment tax rate from its present level of 7 to 7½ percent.

(2) While we do not object to the proposal to advance the tax increase now scheduled for the year 2011 to 1985 and 1990, we believe it is clearly insufficient, and we recommend an immediate increase of .5 percent in the tax rate on both the employees and employers.

(3) We support the new test for dependent's benefits that would reduce the revenue loss resulting from the recent Supreme Court decision by imposing a dependency test for all dependent benefits.

(4) We support the proposal for decoupling in principle, and in particular the proposal that there be no transition period for disability or survivor benefits when the decoupling legislation is enacted. However, as we pointed out a moment ago, we strongly urge that the formula for determining the primary insurance amount be modified to lower the replacement ratio to 30 percent at the highest levels of average indexed monthly earnings and that a percentage cap of 65 percent of predisability earnings be enacted as the maximum total disability benefit available to a disabled beneficiary and his dependents under Social Security and Workers' Compensation.

(5) We oppose the proposal to enact counter-cyclical dependence upon general revenue financing and the proposal that is dependent upon that which would reduce the reserve level of the trust funds to 33 percent of a year's outlay.

(6) We oppose the proposal to tax employers on the entire earnings of employees on the ground that this is merely a euphemism for an increase in the employer income tax.

(7) We oppose the proposal to increase the amount of the employee wage subject to tax above the amounts scheduled under present law on the ground that these increases result in automatic increases in the benefit formula, which is already too high.

(8) We oppose the shifting to OASDI of one-half of the 0.2 percent increase in the Medicare tax rate scheduled for 1978 and 40 percent of the 0.25 percent increase scheduled for 1981.

H.R. 8076

(1) We are impressed by the thought that has gone into the development of the proposals for modifying the definition of total disability, but we have grave doubts about the efficacy of the concept of disability applicable after age 50. In our industry, we have insured some people against the complete inability to engage in their regular occupations for years. We have found that this is a reasonable definition for short periods of disability, but that it tends to prolong disabilities beyond what would normally be expected after sufficient time for vocational rehabilitation has elapsed, because persons protected by this definition can often secure other work from which they can earn substantial incomes while drawing total disability benefits. There is enough of this sort of problem in governmental disability programs today, particularly in the programs covering Federal employees. Some members of the Subcommittee may have seen the "60 Minutes" program on air traffic controllers that dramatically demonstrated the dangers of such a definition. We believe that the interpretations that would emerge out of your proposed definition of disability as "inability to engage in substantial activity requiring skills or abilities comparable to those of any gainful activity in which the claimant has previously engaged with some regularity over a substantial period of time" would be similarly interpreted and would produce the same problems.

We suggest that the definition of disability for benefits payable between five months and one year following disability should be based upon total and permanent disability only, or disability expected to terminate in death, and should not include temporary disability expected to last more than twelve months. The latter clause in the current legislation is too subjective to be accurately administered, and causes significant differences in interpretation from one state jurisdiction to another. In addition, we suggest that after twelve months of disability the definition should require that the claimant be completely unable to engage in any occupation or employment for which he is or might become qualified by education, training or experience.

We favor the provisions you have proposed for suspension rather than termination of disability benefits for up to two years on return to work and the continuation of Medicare eligibility until there has been a medical recovery or two years of work. We favor your proposal to provide for immediate reinstatement of Medicare eligibility upon a recurrence of total disability.

(2) We continue to strongly support the need for more explicit administrative guidelines for the Social Security Disability Income system. In addition, the split Federal and State responsibility for the program tends to limit efficiency and cause inequity between State jurisdictions. We believe the Federal authority to administer and direct the program should take precedence over any State authority, and support the recommendation in H.R. 15630 to strengthen the Secretary to HEW's authority in this area. New administrative regulations should also have a favorable cost impact upon the system.

Mr. Chairman, the present Social Security Disability Income Program discourages rehabilitation and encourages an individual to malingering. Indeed, the current Social Security Disability Income Program has characteristics and shortcomings that increasingly make it take on the appearance of unemployment and retirement coverage, which removes it from the effective control and management of disability coverage. Overinsurance, which is the basic reason for work disincentives, must be effectively and clearly controlled and eliminated in any new legislation. We believe the 65 percent of gross earned income maximum benefit mentioned in our testimony is the only logical way to control this problem.

The health insurance industry presently insures more than eighteen million Americans for long term disability income, and an additional forty-five million for short term coverage.¹ The sharp and unsound increases in Social Security Disability Income Benefits during the past five years have created serious over-insurance problems that have been translated into unprecedented high morbidity, for both the private sector and for Social Security Disability Income. The original Disability Income Benefits during the past five years have created serious over-insurance problems that have been translated into unprecedented high morbidity, for both the private sector and for Social Security Disability Income. The original concept of Social Security Disability Income Benefits has gone far beyond its original intent and is eroding the markets that the private insurance sector has served well. In order for the Social Security System and this industry to survive, the quantum leaps in coverage and their inequities must be eliminated.

We do not believe that the solution of the Social Security System's financial problems lie in either directly or indirectly funding the program through general revenues. Such a step will not be in the public's interest and will change markedly the traditional financing character of the system itself. The primary solution lies in controlling the excessive outflow of benefits. Indeed we believe if the recommendation made above are adopted, the integrity of the system is protected, and general revenues are not necessary.

We stand ready to be of assistance to you and your staff in any way insurance industry professionals may be of help. I thank you for the opportunity to express our concerns and suggestions on this subject.

¹ Source Book of Health Insurance Data—1976-77.

EXHIBIT A

Age 14-29

SSDI Benefit : Net Income (Take Home Pay)

Assumptions:

SSDI Benefits = MFB For H, W, and 1 C

Net Income = Gross Income

- Federal Withholding Tax

- FICA Tax

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5/2/77

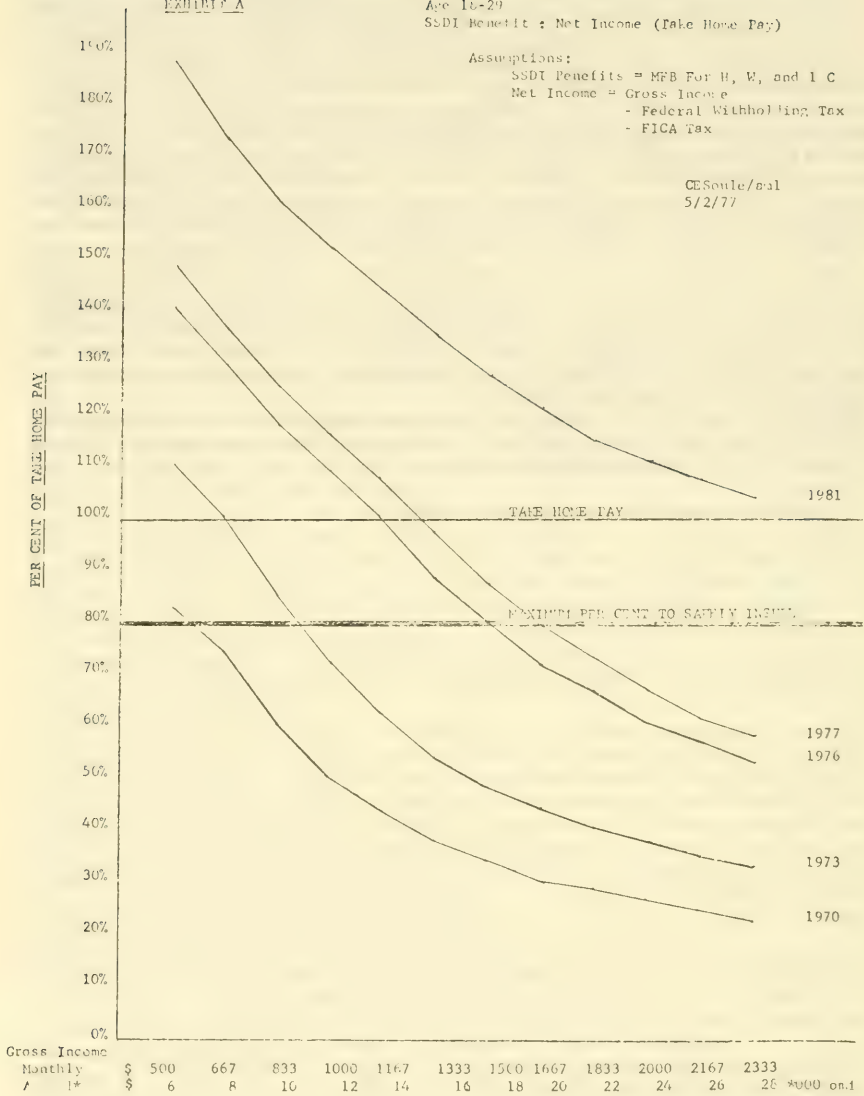


EXHIBIT B

Age 35

SSDI Benefit : Net Income (Take Home Pay)

Assumptions:

- SSDI Benefits - FFL For H, W, and 1 C
- Net Income = Gross Income
- Federal Withholding Tax
- FICA Tax

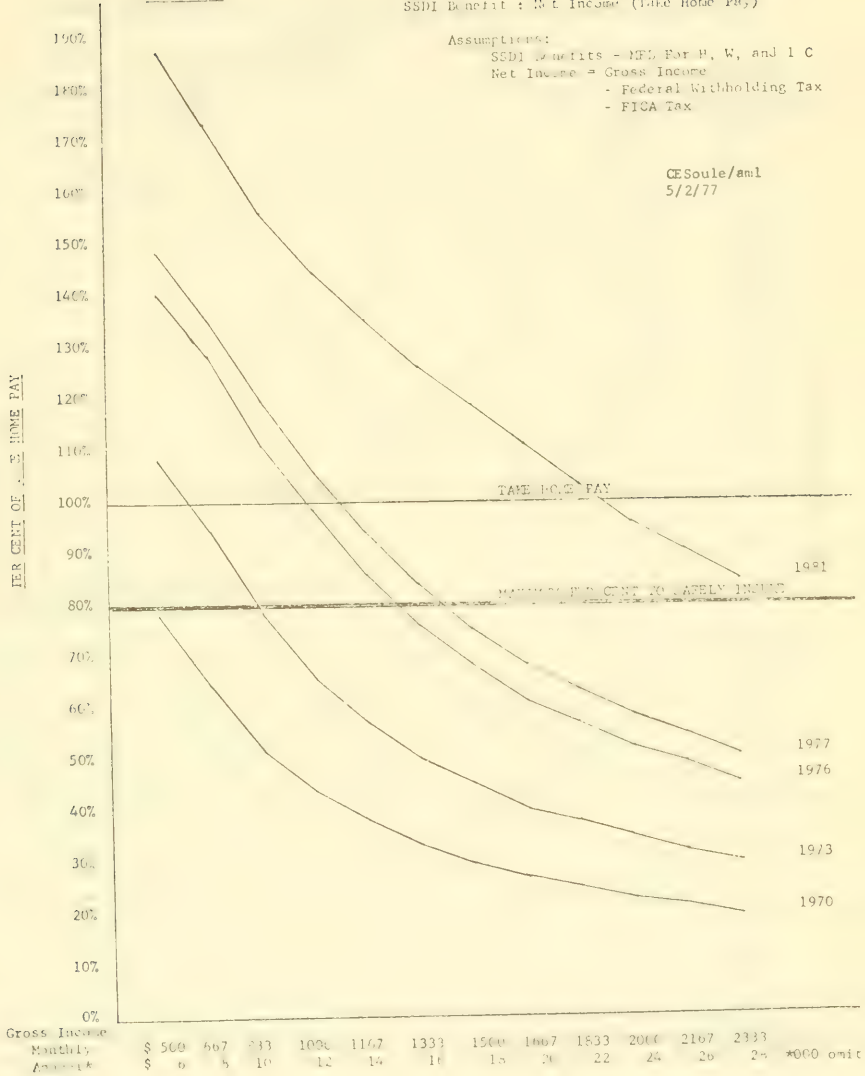
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EXHIBIT C

Age 40

SSDI Benefit + Net Income (Take Home Pay)

Assumptions:

SSDI Benefits = MFB For H, W, and 1 C

Net Income = Gross Income

- Federal Withholding Tax

- FICA Tax

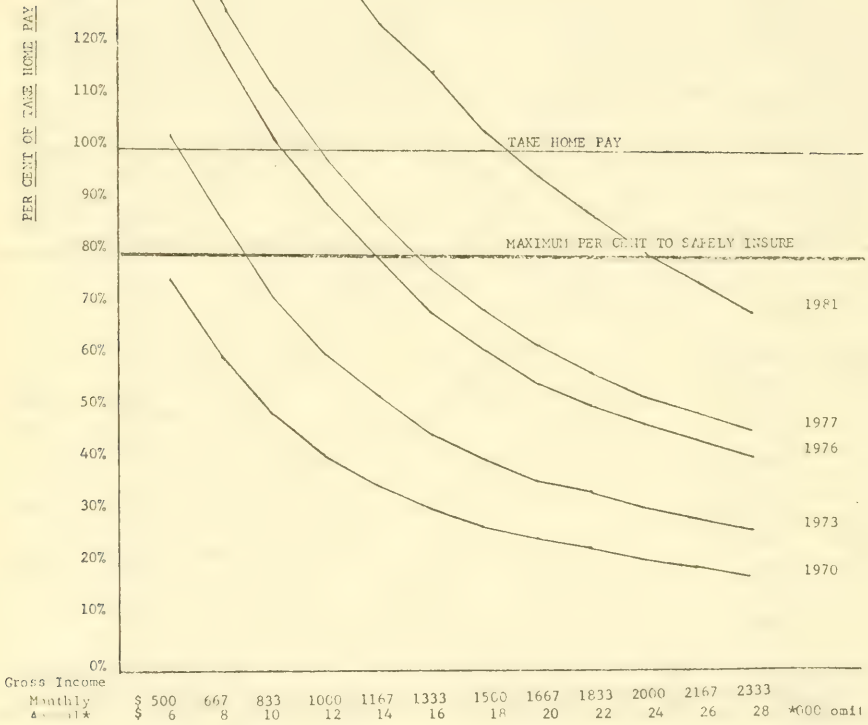
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EXHIBIT D

Age 45

SSDI Benefit : Net Income (Take Home Pay)

Assumptions:

SSDI Benefits = MFB For H, W, and 1 C
 Net Income = Gross Income
 - Federal Withholding Tax
 - FICA Tax

CESoule/sml
 5/2/77

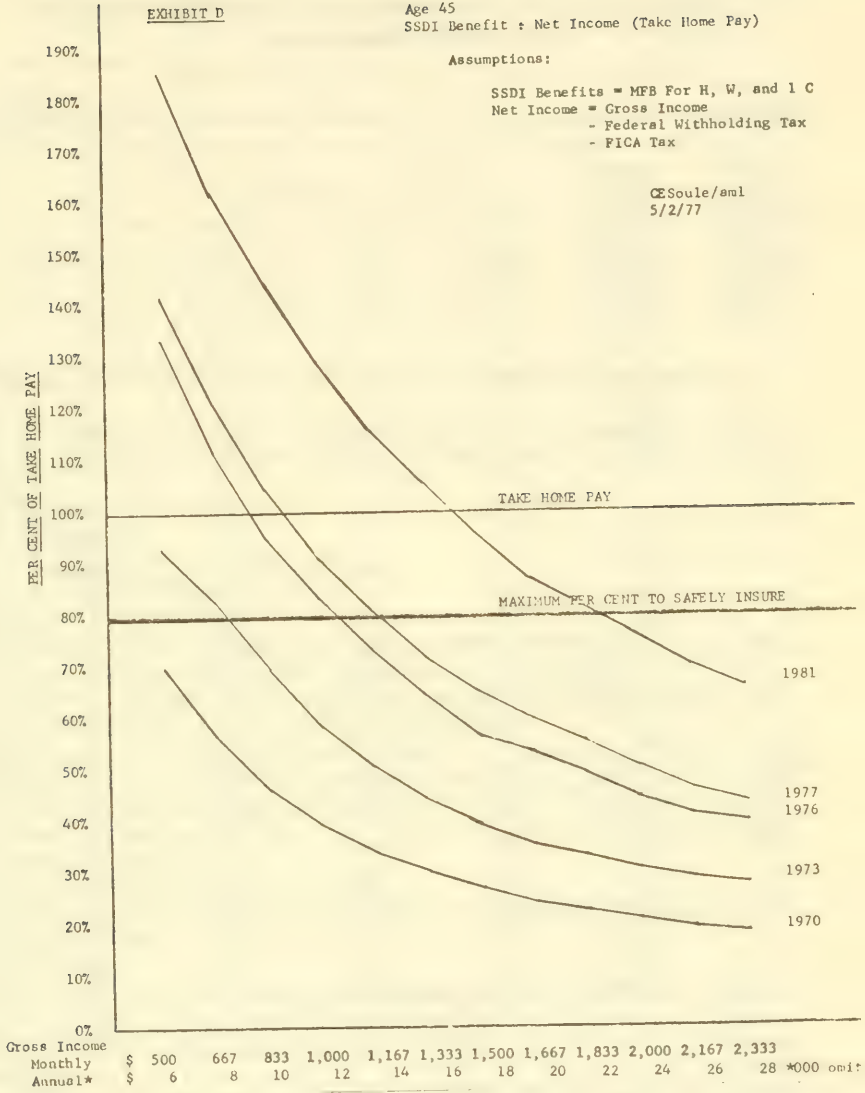


EXHIBIT E

1971 INCOME REPLACEMENT RATIOS

Maximal Family Benefit (H, W and 1 C) + "Take Home Pay"

"Take Home Pay" = Gross Earned Income, less Federal Withholding Tax and less FICA Tax

Year of Disability	Gross Income	A-G-E-S			
		29	35	40	45
1970	\$ 6,000	82%	78%	45%	70%
	8,000	74	63	58	55
	10,000	60	51	48	45
	12,000	51	43	40	40
	14,000	44	37	33	33
	16,000	38	32	30	30
	18,000	35	30	27	27
	20,000	31	26	24	24
	22,000	29	24	22	22
	24,000	27	22	21	21
	26,000	25	21	20	20
	28,000	23	20	19	19
1977	\$ 6,000	150%	149%	144%	142%
	8,000	138	136	125	120
	10,000	126	122	110	104
	12,000	112	108	98	90
	14,000	104	97	85	80
	16,000	92	83	76	72
	18,000	82	75	68	64
	20,000	76	67	62	58
	22,000	70	63	56	54
	24,000	65	58	51	51
	26,000	62	54	48	47
	28,000	58	51	44	44
1981	\$ 6,000	187%	187%	185%	184%
	8,000	173	172	170	160
	10,000	160	156	150	144
	12,000	151	143	135	129
	14,000	143	135	122	115
	16,000	135	126	112	106
	18,000	128	118	102	95
	20,000	122	110	95	85
	22,000	117	102	86	81
	24,000	113	96	80	76
	26,000	110	90	75	69
	28,000	108	85	69	75

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July 1, 1977

Exhibit F—Group long-term disability experience 1969-73 TSA 1975*

Percent of gross income insured :	Ratio of actual/expected claims
50 percent or less.....	0.88
More than 50 percent.....	1.09
More than 60 percent.....	1.42
More than 70 percent.....	2.19

Derived from : Transactions, Society of Actuaries, 1975 Reports of Mortality and Morbidity Experience (Page 266).

EXHIBIT G

GAIN (LOSS) UNDERWRITING RESULTS INDIVIDUAL NONCANCELLABLE DISABILITY INCOME

[In thousands]

	Earned premium	Gain (loss) from underwriting
1967	\$400,200	¹ \$30,600
1968	403,500	¹ 28,800
1969	418,500	¹ 26,100
1970	472,300	¹ 8,900
1971	538,300	¹ 10,200
1972	585,000	¹ 15,300
1973	609,000	¹ (200)
1974	692,400	¹ (39,600)
1975	753,000	¹ (59,200)
1976	333,600	² (68,300)

¹ Argus Chart of Health Insurance 1968-76.² Combined figures from annual statements for 36 life insurance companies' noncancellable disability income results.

Mr. JACOBS. Mr. Parker, do you have additional remarks?

Mr. PARKER. No. I am here chiefly to help with questions, if you have any.

Mr. JACOBS. Thank you.

Mr. Gephardt?

Mr. GEPHARDT. I have no questions.

Mr. JACOBS. Ms. Keys?

Ms. KEYS. No questions.

Mr. JACOBS. That means you were pretty thorough, I suppose, gentlemen. We appreciate your testimony very much.

We have 2 minutes before the bells are going to ring, which will mean we will have to leave for a few moments.

Mr. PARKER. I would just like to make one comment. While I was waiting I was reading Mr. Grossman's testimony, which is coming later. I would like to make the observation that you should listen to his statement because he has a very good statement. You won't find a better expression of it.

Mr. JACOBS. Thank you very much.

I think possibly it would be wise for the committee to suspend now for a few minutes.

[Brief recess.]

Mr. JACOBS. Our next witness, representing the Vocational Evaluation and Work Adjustment Association, is Dr. Richard J. Baker, president-elect of the Vocational Evaluation and Work Adjustment Association.

Dr. Baker, you are welcome. We appreciate your contribution and if you have a prepared text, then it will be put into the record. Otherwise you can summarize.

I suppose you remember the definition of a lecture. It is that process by which the notes of the lecturer are passed on to the notebooks of the college student without passing through their minds. I assure you that is not the case here.

**STATEMENT OF RICHARD J. BAKER, ED. D., PRESIDENT-ELECT,
VOCATIONAL EVALUATION AND WORK ADJUSTMENT ASSO-
CIATION**

Dr. BAKER. I have a mixture. I want to present some of the material in the written statement that is to be placed in the record and also some other comments. I hope not to take my 10 minutes but Judge Grossman has told me if I don't take that long he would be happy to take any time left.

Mr. JACOBS. That has been a tradition.

Dr. BAKER. Dr. Carl Hansen has covered the National Rehabilitation Association position on various points concerning H.R. 8076 and I would like to relate most of my comments to various aspects of H.R. 5064.

I am representing the Vocational Evaluation and Work Adjustment Association. It is known as VEWAA, and it is the second largest division of the National Rehabilitation Association. VEWAA as an organization is particularly concerned with vocational evaluation and work adjustment as it contributes to an interdisciplinary solution to the problems of handicapped people with the primary aim of assisting handicapped persons to become, to their greatest possible extent, self-sufficient and productive members of society.

Toward this end, handicapped persons must, (1) have adequate access to the rehabilitation process; (2) be motivated to participate in the rehabilitation process; and (3) have access to adequate evaluation and adjustment treatment or training programs to help them achieve and maintain employability and self-sufficiency. It is also not enough from a humanitarian point of view or a rehabilitation point of view only to deal with the question of employability.

The real savings of rehabilitation to society rests in the actual achievement of self-sufficiency and gainful employment of handicapped persons. The denial of social security or other benefits may save tax expenditures in some areas but many of those denied will continue to be unemployed and, therefore, continue to cost taxpayers money either in terms of personal support or perhaps in terms of county, city, or State financial aid of one sort or another.

I feel that certain aspects of H.R. 5064 provide some possible answers to this dilemma.

First, section 222(a) outlines or proposes a review date for all cases except hardcore cases and this should serve to remind beneficiaries that they are not necessarily being judged totally disabled forever and that they should strive whenever possible to regain self-sufficiency and financial productivity. For many, however, this end cannot be reached without the provisions of rehabilitation services. The first step in this process is to determine if there is a reasonable expectation that the provision of such services will result in restoring the individual to productive activity, at a cost that is also reasonable.

In my opinion, one of the primary strengths of H.R. 5064 is that it sets forth a mechanism whereby a claimant has the right to face to face confrontation with a person participating in the decision on the claimants case and in cases where rehabilitation services may be involved, includes the participation of a rehabilitation counselor.

A further strength that is covered in section 101 A-B and the appeals section 205(4) is the stipulation that feasibility for rehabilitation will be documented by the rehabilitation counselor through a written appraisal and that when the claimant takes exception to this appraisal, the claimant will have access to an evaluation of his/her potential in a rehabilitation facility. Presently, a literal interpretation of this amendment indicates that the services of a State agency rehabilitation facility would be required for the vocational evaluation of these claimants. I would like, however, to suggest that the wording of the bill be changed to include the use of "private not-for-profit," "for-profit," or "proprietary rehabilitation facilities approved by the State agency." At this time, many States do not have State operated rehabilitation facilities that provide comprehensive vocational evaluation services and it would be difficult and costly to implement this aspect of the bill without the use of the many private rehabilitation facilities around the country that offer quality vocational evaluation services.

Once the claimant has become involved in the vocational evaluation process and has been determined employable there is a much higher probability that the State vocational and rehabilitation services will continue to be provided and that eventual gainful employment will follow.

In summary, the proposed amendments have the potential to positively affect many persons applying for social security disability benefits. At the present time there are a number of practitioners in the field of vocational evaluation who have the capability to predict vocational potential and the knowledge to develop rehabilitation plans to help persons reach their predicted potential. In addition, a growing number of educational institutions are providing degree programs and other specialized training in vocational evaluation and work adjustment. We would welcome the passage of these amendments as another opportunity for professional evaluators and work adjustment specialists to assist handicapped persons with vocational problems to have full and fair access to the rehabilitation process and whenever possible, to help them become self-sufficient, self-supporting, and contributing members of society.

Thank you.

[The prepared statement follows:]

STATEMENT OF RICHARD J. BAKER, ED.D., PRESIDENT ELECT, VOCATIONAL
EVALUATION AND WORK ADJUSTMENT ASSOCIATION

One of the primary purposes of the Vocational Evaluation and Work Adjustment Association (VEWAA) is to encourage the development of vocational evaluation and work adjustment as it contributes to an interdisciplinary solution to problems of handicapped people with the primary aim of assisting handicapped persons to become, to their greatest possible extent, self-sufficient and productive members of society.

Toward this end I personally, and as a representative of VEWAA, would like to support the enactment of this bill, as it will not only encourage the expenditure of social security monies on those persons truly entitled to those monies but also provide a realistic mechanism to encourage many persons with marginal impairments to return to work.

Under the proposed amendments, an ending date as well as a beginning date is specified for all disabilities except for the hard cored disabled. This should serve to remind beneficiaries that they are not necessarily being judged totally disabled forever and that they should strive whenever possible to regain self-

sufficiency and financial productivity. For many, however, this end cannot be reached without the provision of rehabilitation services. The first step in this process is to determine if there is a reasonable expectation that the provision of such services will result in restoring the individual to productive activity (at a cost that is also reasonable). In my opinion, one of the primary strengths of this bill is that it sets forth a mechanism whereby a claimant has the right to face to face confrontation with a person participating in the decision on the claimants case and in cases where rehabilitation services may be involved, includes the participation of a rehabilitation counselor.

A further strength is the stipulation that feasibility for rehabilitation will be documented by the rehabilitation counselor through a written appraisal and that when the claimant takes exception to this appraisal, the claimant will have access to an evaluation of his/her potential in a rehabilitation facility. Presently, a literal interpretation of the bill indicates that the services of a State Agency rehabilitation facility would be required for the vocational evaluation of these claimants. I would like, however, to suggest that the wording of the bill be changed to include the use of private not-for-profit, for-profit, or proprietary rehabilitation facilities approved by the State Agency. At this time, many states do not have state operated rehabilitation facilities that provide comprehensive vocational evaluation services and it would be difficult and costly to implement this aspect of the bill without the use of the many private rehabilitation facilities around the country that offer quality vocational evaluation services.

In summary, the proposed amendments have the potential to positively affect many persons applying for social security disability benefits. At the present time there are a number of practitioners in the field of vocational evaluation who have the capability to predict vocational potential and the knowledge to develop rehabilitation plans to help persons reach their predicted potential. In addition, a growing number of educational institutions are providing degree programs and other specialized training in vocational evaluation and work adjustment. We would welcome the passage of these amendments as another opportunity for professional evaluators and work adjustment specialists to assist handicapped persons with vocational problems to have full and fair access to the rehabilitation process, and whenever possible, to help them become self-sufficient, self-supporting, and contributing members of society.

Mr. JACOBS. Mr. Gephardt?

Mr. GEPHARDT. No questions.

Mr. JACOBS. Ms. Keys?

Ms. KEYS. No questions.

Mr. JACOBS. That means you were really good.

The next organization represented is the National Federation of the Blind represented by Mr. James Gashel, chief of the Washington office.

Thank you, Mr. Gashel.

STATEMENT OF JAMES GASHEL, CHIEF, WASHINGTON OFFICE NATIONAL FEDERATION OF THE BLIND

Mr. GASHEL. Thank you. My name is James Gashel. I am chief of the Washington office of the National Federation of the Blind. I submitted a statement for the record, and I ask that it be included. And I will try to summarize that in a few brief remarks.

These important hearings are on a number of very tough issues with reference to the Social Security Administration. Some have contended that congressional action for at least the immediate future should be limited to the income side of social security leaving, for the moment at least, the questions related to the payments of benefits and the eligibility conditions for further study.

We disagree with this, because we think that the benefit inequities that exist have a serious economic effect on certain categories of

beneficiaries, the result being that the economy as a whole suffers and, of course, to the extent that this happens the social security program is placed in greater jeopardy.

We cannot avoid confronting the fact that both the income and the benefit side of social security are inevitably intertwined with the general economy. So solutions to the present problems of the social security system ought to be comprehensive.

We all have our own concept of what social security ought to be. We focus on the disability program supporting primarily three kinds of proposals: First, the removal of the 5-month waiting period for the receipt of cash disability benefits. Second, the elimination of the 2-year waiting period for medicare eligibility. And, third, a modification in the conditions governing eligibility of blind persons to receive disability insurance benefits.

Now, specific legislation to accomplish each of these objectives has been introduced in this and previous sessions of the Congress. While we would like to have each of these proposals adopted, we also know that there are certain cost factors involved and especially this is true with respect to eliminating the waiting period for disability and medicare eligibility.

With regard to the third of the proposals, that being the change in the eligibility conditions for blind persons, we think that the subcommittee should act affirmatively when a social security bill is marked up in this session.

We consider this proposal to be a priority one because the present conditions for receiving disability insurance are at cross purposes with our desire and our efforts to expand greatly the numbers of blind persons engaging in the work force in this country.

We favor adoption of the chairman's, Mr. Burke's, bill, H.R. 3049 which recognizes the hard economic realities facing the blind person who wants to be a productive, self-supporting citizen. Through its provisions this bill accepts the reality that blindness has devastating economic consequences associated with it for the individual, for his family, and for our society as a whole. It admits that the Social Security Act itself creates powerful incentives to remain idle. It also recognizes that the blind, as a class, are largely unemployed or underemployed, a situation which is created not by any innate incapacity among the blind but by the prevalent social attitudes about blindness.

Adoption of H.R. 3049 would mean that any blind person who has worked for a year and a half under covered employment would be entitled to disability cash benefits regardless of earnings. The economic impact of blindness makes the most compelling argument for this approach. Seventy percent of the employable blind population is either unemployed or underemployed according to statistics of the Health, Education, and Welfare Department.

The reasons for this are many. At the heart of the problem is the fact that blindness has a number of very undesirable attitudinal associations connected with it.

A recent survey revealed that next to cancer people fear blindness most.

The employer who is willing to consider a blind person on terms of equality is rare. Federal law itself even reflects these attitudes. For example, the Fair Labor Standards Act allows employers, both sheltered workshops and private industry, to obtain certificates of exemption paying blind workers less than the minimum wage, and this pay can even go to as low a rate as 25 percent of the prevailing minimum wage.

This presumably is based on the theory that the blind can't be productive. But the theory doesn't match the facts.

The employment policies of the Social Security Administration itself are a microcosm of what we face when we try to compete for jobs in open industry. About 10 years ago the Social Security Administration established a project to employ large numbers of blind persons in teleservice positions. It was a laudable effort, but the blind who have these jobs are now finding that advancement is not permitted because supervisors in the Social Security Administration can't figure out how a blind person might be able to do what they do.

So, many of the blind, in fact, most of the blind who work at the Social Security Administration are locked into low-scale jobs through no weakness of their own. This is discrimination. And through their low wages, the blind are paying for this discrimination.

But this is only one example of the kind of economic reality or consequence of blindness. Another is the economic consequences of the Social Security Act itself. Although blindness is specifically defined as a disability under the Social Security Act, the blind are still subjected to the substantial gainful activity test that places a \$200-per-month limit on outside earnings above which no benefits are paid. The effect of this earnings limitation on the blind is even more punitive than that which applies to retirees since benefits are summarily discontinued. Not reduced on a sliding scale as is the case with retirees but summarily discontinued if a beneficiary earns more than \$200 a month. Consider the dollars involved.

A blind beneficiary with dependents receives, let us say, \$800 a month in disability insurance. This is not uncommon. Hoping to better himself and wanting to carry his load as a citizen he seeks employment. If he finds work, he will be lucky if the gross pay for that work even approximates the disability insurance payments.

When work expenses are taken into account and inevitably they must be, his take home pay will be considerably smaller. There is transportation to and from work. There may be the cost of hiring a reader. And there is, of course, the Federal, State, and FICA withholding. When all is said and done his take home pay may be half as much as the disability insurance benefits.

Keep in mind that this isn't even a typical example since most blind persons seeking work rarely find it at pay rates as high as their disability insurance benefits.

By contrast, under the Burke bill, that is H.R. 3049, the efforts of blind persons to better themselves would be rewarded. They could only gain, not lose, financially by working. The disability insurance benefits received by working blind persons would compensate them for the

typical work expenses which blind people have, such as hiring readers, drivers, or being equipped with special equipment which is very often quite expensive.

Of course, these benefits would also partially replace their lost earnings. That is, earnings which we lose or do not get because employers and the general public have not been able to accept the innate formality and equality of the blind.

Roughly 120,000 blind persons now receive cash disability benefits. They are not paying in. Under Mr. Burke's bill, H.R. 3049, they could pay in. They would not receive any more in benefits but they could enter employment status, begin paying taxes and begin putting money back into the social security trust fund. Over time the SSI roles would diminish with eventually very few blind people receiving title 16 benefits. Other welfare programs would see a corresponding decrease.

Inevitably what must be borne in mind is that we have accepted the principle in this country that failing to provide for our citizens, at least to some degree, is unacceptable. With our system of social security and SSI, blind people will either pay their own pay or someone else will have to pay it for them.

Mr. Burke's bill believes that it is best to encourage blind people to carry as much of their own load as they can, making them taxpayers in the process by offering them a hand up through an insurance payment to make up for the economic adversities which almost always can be found along with blindness.

Mr. Chairman, with this legislation of H.R. 3049 before the subcommittee, I hope that the committee will not fail to act and act affirmatively on it. It has achieved broad bipartisan support both in this body and the other, where it has been adopted six times on separate occasions. Senators Humphrey, Bayh, and Curtis are the leading champions of this legislation over in the Senate and a number of members of this committee have sponsored Mr. Burke's bill in the House.

The blind are prepared to greet the adoption of this legislation with a commitment to show the Congress what can be done when people who have been kept down receive a little boost.

Mr. Chairman, I think that concludes the statement I would like to make and I would be pleased to answer any questions.

[The prepared statement follows:]

STATEMENT OF THE NATIONAL FEDERATION OF THE BLIND

Mr. Chairman, my name is James Gashel. I am Chief of the Washington Office of the National Federation of the Blind. My address is Suite 212, Dupont Circle Building, 1346 Connecticut Avenue, NW., Washington, D.C. 20036.

The members of the Sub-committee are familiar, I think, with the nature of our organization and the work we do, but for the record I would like to indicate that the National Federation of the Blind is a membership organization of blind people. There is a state affiliate of the National Federation of the Blind in every state and the District of Columbia. Local chapters exist in most areas throughout the nation where there are enough blind people who want to get together to form a local organization. We are widespread, growing, and active.

Our interest in Social Security legislation is profound and based on good reason. The provisions of Title II of the Social Security Act impact directly on many of our members. Today more than 120,000 blind persons are beneficiaries in the Disability Insurance Program, and thousands more receive retirement and other types of benefits from Social Security trust funds. Obviously we have a substantial interest in the stability and long-range integrity of the Social Security system.

These hearings are focusing on the future of the social insurance system in this country and the methods which must be devised so that it can be its commitments to beneficiaries beyond 1979 (with respect to those who are entitled to disability benefits) and 1981 (for those receiving old age and survivors insurance payments). There are literally hundreds of pending proposals each having projected costs and/or predictable benefits. Some of these propositions (most notable of which is the Administration's plan) focus entirely on the financing side, arguing that a crisis is at hand.

Without denying the need for speedy remedial action by the Congress, the National Federation of the Blind disagrees with those who argue for legislation aimed solely at the income side of Social Security's current problems. Mr. Chairman, we believe that the difficulties are more deeply rooted and far more complex. Legislation which alone restructures the income side of Social Security may overcome (for the moment at least) the actuarial imbalances, but clearly the time is at hand for this Sub-Committee and the Congress not only to look at but to legislate against a number of inequities which exist in the system and have adverse impacts both socially and economically. In fact, it is widely felt that the nation's economic down-turn of recent years has been perhaps the greatest factor precipitating the current financial crisis in Social Security. This being the case it is only wise and prudent for this Sub-Committee and the Congress to confront and deal with the entire range of outstanding Social Security issues rather than taking the piecemeal approach of solving one part of a more complex set of problems.

Each organization and individual appearing before this Sub-Committee has a list of amendments or proposed changes for the program. When I appeared before this Sub-Committee a little more than one year ago I emphasized primary concerns in three areas—the five-month waiting period for disability benefits, the twenty-four-month waiting period for Medicare eligibility, and the conditions governing the eligibility of blind persons to receive disability cash benefits. The reasons for changes we suggested a year ago in each of these areas are as valid today as they were then. The solutions we offered then are the same now, and a number of related bills have been referred to this Sub-Committee which we hope you will favorably report.

Of the three problem areas we discussed a year ago, one—that is, the eligibility conditions for blind persons to receive disability benefits—is the most directly related to financing issues. A bill, H.R. 3049, has been introduced by the distinguished Chairman of this Sub-Committee, Mr. Burke, and there are I believe as many as fifty identical bills, a number of which have been introduced by members of the Sub-Committee. This legislation has broad bipartisan support, and since it is related most to financing issues, I will confine my remarks primarily to this particular pending proposal.

The eligibility conditions which the blind must meet to gain entitlement to benefits under the present law involve, first, a work requirement which extends from a minimum of six quarters of covered work to a maximum of twenty-six quarters, depending on age and the onset of blindness. Blind persons are also subject to the substantial gainful activity test which takes into account a number of employment-related factors, the main consideration being the amount of pay received. Under present Social Security regulations the determination of substantial gainful activity is generally placed at a \$200.00 per month earnings level. This, of course, is substantially below the "earnings limitations" for retirees.

Adoption of H.R. 3049 and similar bills would make two fundamental changes in these eligibility conditions. First, there would be a standardizing if the work requirement at a flat six quarters, saying, in effect, that blind persons would have "fully insured" status under Social Security after having paid into the system for a year and one half. Secondly, the substantial gainful activity test would be removed for the blind, thus regarding blindness itself as a disability having adverse economic consequences and insuring against their impact on the individual citizen covered by Social Security.

The compelling arguments for passage of such legislation are found in the traditional insurance concepts which have long been associated with the Social Security program. Social Security to us is insurance, not welfare; and it is on this basis (the insurance concept) that we support H.R. 3049. The disability insurance portion of Social Security was conceived as a way of providing benefits to individuals to partially replace income lost due to a disability. This feature—that is, the possible entitlement to disability cash benefits—was made available

to all participants in Social Security (the rich and the poor alike), so the presumption must have been that there are certain economic consequences which predictably result from disabilities and society is better off if an insurance plan is developed to protect the citizens from the adverse effects of these economic consequences.

This presumption is, to be sure, probably valid. In the first place, the social attitudes about blindness are full of myths and misconceptions. As a group, the blind face an incredibly devastating set of artificial impediments when they seek to enter and compete in the labor force. The blind are not just viewed as unemployed. We are usually considered unemployable, and there is a great deal of difference in terms of the kinds of opportunities which become available.

To be sure, the blind pay a heavy price this erroneous labeling. For example, recently the Department of Health and Education and Welfare estimated that seventy percent of the employable blind population is either unemployed or underemployed. If before blindness, an individual had an income of, say, fifteen thousand dollars annually (not an uncommon income for sighted individuals), and if after blindness, that same individual finds employment at six thousand dollars annually (not at all an uncommon experience for the blind), he will still not be eligible to continue receiving disability insurance benefits despite the fact that a substantial loss of income has occurred.

Putting the matter more clearly, the blind are now being asked not only to suffer the indignation of being cast aside in competition for jobs in terms of social opportunities, but we are also required to pay in terms of cold cash for second-class status. The social attitudes about blindness which have traditionally prevented us from assuming the more responsible positions and occupying the more lucrative employment stations in the labor force have been fostered by society as a whole, not just the blind members of society, and therefore it is equitable for us to propose that everybody should share in carrying the financial burden imposed on us by these social attitudes—a burden which we now bear alone.

A second and equally devastating set of economic consequences facing the blind are the result of the Social Security system itself. I refer here to the disincentive factor which inhibits the initiative of any blind person who is naturally concerned about some degree of long-range economic security for himself and his family. The economic realities are these: under existing law, if an individual becomes blind and ceases to engage in "substantial gainful activity," he likely will be eligible to draw disability insurance. He has every incentive to remain unemployed and not return to work at all. Why? In the first place, he is probably not an expert in the law. He only knows that he is now drawing an insurance payment each month and that if he tries to go back to work, he may lose it—whether his attempt at self-support is successful or not. The law is complex, and the talk of allowed earnings, trial work periods, definitions of substantial gainful activity, etc., is confusing and not generally conducive at an attempt to make new beginnings. Furthermore, if the individual actually goes to work and (after a specific trial work period) is earning somewhere in the neighborhood of \$200 per month, he will lose disability insurance payments and (if he has earned it) Medicare eligibility as well as. This is true even though he may have been drawing considerably more than \$200 per month in disability payments. If dependents are taken into account, the individual and his family may be drawing disability benefits in excess of \$1,000 per month, tax free. He is penalized for having tried to become self-supporting by losing his insurance altogether. Even if he goes back to work, he is tempted to conceal earnings, and if he yields to the temptation, he lives in fear of being detected.

Besides all these complexities, it is conceivable under present law and depending on one's interpretation, that the individual may become blind, go back to work, and lose his job, and thereby become ineligible ever to receive disability insurance payments again because (by going back to work) he has demonstrated that his blindness does not prevent him from engaging in substantial gainful activity. If, on the other hand, he is willing to settle down and draw disability insurance without any attempts to go back to work at all, he can securely rest in the knowledge that the checks will continue on a regular basis, month after month, year after year.

When you combine the economic effects of the social attitudes about blindness with the economic consequences resulting from the disincentives of the Social Security system itself, it is not surprising that the number of blind persons receiving disability benefits (and thus not engaging in employment) has tripled

in the last five years, going from 40,000 in December 1972, to approximately 120,000 today. Place yourself in the position of a blind person considering possible employment. Remember that, including dependents benefits, the family income from Social Security may exceed \$1,000 per month. I know a number of blind people who (believing in the work ethic) would accept employment offering gross wages at somewhat less than their possible Social Security income, but they must also consider deductions for income and F.I.C.A. Taxes, as well as a variety of expenses related to their work. Commonly a blind person finds it necessary to employ a reader or driver, and these expenses lower the take-home pay even more. Facing such circumstances, can a blind person afford to take a job and risk economic security? Some think they can, but many have found that they simply cannot.

H.R. 3049 proposes to offset these adverse economic consequences by providing Social Security benefits to blind persons who have obtained a certain amount of covered work. The basis upon which it should be adopted is the broader social benefit which would result if an entire segment of the population whose talents are now underutilized were to be made fully productive. Under this bill the blind beneficiary of disability insurance would know that he could count on a monthly insurance payment and that it would not be jeopardized by attempts at improving his condition. The blind person is better off, and society generally is better off for him to be productive instead of idle, working instead of sitting at home. Again, the Department of Health, Education, and Welfare has estimated that income annually lost due to blindness is approximately \$1 billion. The effect of H.R. 3049, we believe, would be substantially to recover this loss, thus allowing blind persons to be contributors in America, not tax burdens.

What a promising future there would be with adoption of this legislation which would usher in an era of confidence and hope and bring down the curtain on despair and discouragement. Today it is rare to find an applicant for disability insurance benefits who has not encountered much anxiety and grief in attempting to gain entitlement to the benefits earned through work. Sometimes the period of decision extends for more than a year, during which there is much correspondence and telephoning, not to mention contacts with one's Senators or Representatives in Congress. This should not be, and adoption of H.R. 3049 will substantially eliminate all of the complexities, mix-ups, and disqualifications which create the delays and resulting dissatisfactions.

H.R. 3049 boldly asks that a special effort be made to eliminate (insofar as it is possible) the economic adversities which accompany blindness. In doing this the Congress would be recognizing that it is primarily these economic adversities, many of which are caused by mistaken social attitudes, which have held the blind back from leading fully protective lives. There are other examples, such as veterans compensation, where the theory of providing individuals with an economic base from which to expand their opportunities has proven itself to be sound. This principal should now be put to the test in the Social Security Program.

Of course there are concerns with respect to this proposal as there are, I guess, with respect to any meritorious initiative. In the first place some have objected to H.R. 3049, arguing that it constitutes what they call a radical departure from the original purpose of the Social Security disability insurance program. The contention is that the program was originally established for the purpose of partially replacing earnings lost due to the onset of a disability. The contention is answered quite adequately by some of the data which I have already cited, which indicate that blind persons generally are penalized economically as a result of blindness and the current provisions in the Social Security Act. The disability insurance program can, therefore, partially compensate such persons for their lost income—an outcome which is entirely consistent with its original objective.

Moreover, all blind persons (regardless of income) inevitably encounter certain costs involved in competing with persons who have normal vision in a society which is predominantly oriented toward the use of sight. Most blind people, it is fair to say, employ sighted readers, drivers, grocery shoppers, and so on. It is not at all uncommon for the costs of employing such persons to run as much as \$200 per month. In addition, there is the matter of purchasing specialized tools and materials. Since braille books are not high volume sales items, they are costly. If I need to buy a dictionary for my work, an adequate one will run approximately \$200, while the same book may be purchased for less than \$10 by an individual who can read the ink print edition. If I need a calculator for business

or for keeping personal accounts in order, the most inexpensive one I can get costs nearly \$400, while the comparable model with a print display may be purchased for approximately \$20. The picture is clear, the costs do exist, and the disability insurance legislation contained in H.R. 3049 would replace income which blind people lose as a result of these increased costs.

Equally responsive to the charge that this legislation proposes a radical deviation from the original purpose of the disability insurance program is the finding that the current incentive structure has brought us to the place where the only actual feeling of long-range economic security belongs to those who do not attempt employment. Clearly this is not as it should be, and the legislation proposed in H.R. 3049 calls for a reversal of this negative incentive structure. If adopted, the new law would reward the efforts of blind people to achieve independence and self-sufficiency through employment. No longer would they have to risk the possible economic disadvantages now present in their efforts to enter the labor force. Surely if the Social Security disability insurance program for the blind is to be directed at meeting the needs of those who are now blind, of those who will become blind, and of the American people as a whole, it must be designed to encourage (rather than discourage) blind beneficiaries to achieve their maximum potential vocationally, and currently, to the extent that it fails to do this, the system must be changed.

A second point of concern is the matter of costs. Of course, as I indicated earlier, this concern is particularly relevant in the context of these hearings. In a report given to the Sub-Committee by the Social Security Administration it is estimated that the long-range costs of adopting H.R. 3049 would be perhaps as much as 0.35 percent of taxable payroll, and I think that translates into approximately five hundred million dollars annually. In arriving at this rough figure, the Social Security Administration has made a guess as to the number of blind persons who would join the ranks of those eligible for disability insurance and calculated approximately what their total benefits might be. Since the average annual benefit paid to individual disability beneficiaries is in the range of \$2,500 annually, we can assume that the Social Security Administration is predicting an additional 150,000 to 200,000 blind disability insurance beneficiaries. We find such calculations to be unrealistic in the extreme. According to our best estimates (which I think are at least as good as those of the Social Security Administration), there might be as many as 50,000 newly eligible blind disability insurance beneficiaries as a result of adopting H.R. 3049. If our estimates prove accurate in this regard, the cost in terms of additional benefits would be far less than that predicted by Social Security.

But looking at the cost in terms of additional benefits is only one part (certainly the most negative part) of the total picture. As previously indicated, the overriding objective sought in this legislation is to provide a positive incentive for achieving the fullest employment and productivity of blind Americans. This kind of forward step could certainly not have a negative price tag attached, since by virtue of their employment blind workers would become taxpayers, thus generating a great deal of additional revenue. By including as a cost factor only additional outlays from the Social Security trust funds, the Administration has in effect ignored the predictable increase in employment of blind persons and it has also failed to factor in the additional income which would be generated through employee and employer contributions to the Social Security system. Any realistic costs of H.R. 3049 must account for a sizeable increase in revenues both to the general income tax pool and to the Social Security system. Furthermore, I would remind you that another department within HEW has estimated that annual income lost due to blindness is probably in the neighborhood of 1 billion dollars. The fact that this proposal provides a means of recovering much of this loss must not be overlooked.

Additionally, the data presented by the Administration does not acknowledge the fact that some (probably a considerable number) of the 76,000 persons now receiving Supplemental Security Income payments would become eligible for the improved disability insurance plan and thus would become ineligible for future SSI benefits. In other words, the result would be a transfer effect for a certain number of blind SSI recipients. Any realistic cost picture must take account of this decrease in expenditures from general revenues. Also it may be argued that the improved disability insurance plan would mean that some could move from public assistance and food stamp programs to Social Security, resulting in similar cost savings to be reflected in general revenues.

What these arguments suggests is a well-known fact which must be borne in mind when considering H.R. 3049. Under our present schemes of Social Security, Supplemental Security income, and other income-maintenance programs, the Congress has adopted a philosophy and developed a system which is designed to provide at least a subsistence level income for all blind persons in America. The present structure is so organized that the vast majority of blind persons fall into one of three categories: (a) those who are employed and paying taxes; (b) those who are unemployed and beneficiaries of social security disability insurance; and (c) those who are employed and recipients of Supplemental Security Income payments and/or other welfare grants.

In other words, the present system is structured in such a manner that either a blind person works and helps to pay his own way, or he does not work and the rest of society will pay it for him. Legislation such as H.R. 3049 recognizes this fact and provides for the maximum incentive to be placed on utilizing the talents and abilities of blind people by encouraging them to earn their daily bread.

Then, too, there has been concern that adopting improvements in disability insurance provisions for the blind would open the door to radical changes for other eligible beneficiaries. This concern is, in part, related to the cost argument just discussed, since it seems to be the concern of some that the removal of various disincentives which now exist will inevitably cost more than it will bring in. We reject that conclusion because of the reasons already stated. We think that the wasted lives of blind persons who now possess the potential to work but are given every economic reason not to do so constitute a drain and cost each and every tax payer a considerable amount. At the same time, we recognize the concern and we want to be responsive to it.

Over the years, there has been, both in the Congress and in many of the state legislatures, recognition of the unique problems which blind persons face in dealing with a sight-structured society. Never in our experience have the members of the Congress been unwilling to adopt meaningful and needed programs which are specifically designed to address the problems faced by blind persons simply on the theory someone else may someday want to be involved. In its wisdom, the Congress has always recognized that blind citizens face a unique and difficult kind of economic and social discrimination. The members of the Congress have continuously demonstrated their awareness of the fact that the real problem of blindness stems not so much from any physical lack of ability, but more from a general lack of opportunity and the economic needs of achieving first class status. With blindness, in contrast to other physical disabilities, the severest loss sustained by a person who is blind is the economic handicap. The economic consequences include the abrupt termination of wages, diminished earning power, drastically curtailed employment opportunities, greatly decreased possibilities for advancement, and limited opportunities for increased earnings once employment has been secured. Again, I emphasize that these consequences are not created by the blind themselves, but by society's attitudes about the blind—the attitudes which make blindness one of the most feared conditions of life, second only to cancer according to a recent survey.

A few of pieces of special legislation have been aimed particularly at overcoming the economic handicap imposed on the blind. An example is the adoption of and subsequent amendments to the Randolph-Sheppard Act giving blind persons a priority in the establishment and operation of vending facilities on all federal property. More relevant to our consideration here is the fact that various provisions of Title II and Title XVI of the Social Security Act regard blindness as a different condition and treat it separately from other disabilities. Also, the special needs and unique problems of the blind have often been recognized at the state level where many of the state legislatures have established specific agencies in the state (such as commissions for the blind) to deal with the problems of the visually impaired. None of this enlightened effort on the part of policy-makers has ever to our knowledge resulted in a loud clamor by others to be included, but even so, the supposition that it might happen in some future case should not be used as an excuse for failing to act when action seems most indicated.

In the foregoing comments I have attempted to summarize the arguments for and concerns about the legislation presented in H.R. 3049. I would emphasize that we believe it is intimately related to the financing issue, because the present law tends to keep a segment of the population out of the work force and in payment status for social security benefits. This constitutes a drain on the system—a drain which could be diminished by removing the disincentives, thus providing maximum support for initiatives to seek employment.

In conclusion I can do no more than to repeat what I said to this Subcommittee a year ago: "The blind as a group are prepared to work and work hard. The legislation which we recommend to your attention constitutes an effort on our part to renounce our traditionally established lives of demeaning dependency and subordinate status. This legislation also expresses our courageous determination to escape from many long decades of captivity during which we have been constrained by society's ignorance, myths, and misconceptions. We seek only today to free ourselves from this captivity of ignorance, prejudice, and discrimination, and we ask only the opportunity to lead normal, self-supporting, self-dependent lives. For our part, Mr. Chairman, we are committed to making the provisions of this legislation an effective instrument of rehabilitation, self-help and self-support for the blind. All we ask is your support in your affirmation of these principles in guiding this legislation into public law."

Mr. JACOBS. We appreciate your testimony, Mr. Gashel.

Mr. GEPHARDT. I have no questions. I also appreciate your statement, and certainly it will be taken into account when we consider this legislation. I appreciate your appearance.

Mr. JACOBS. We thank you very much, sir, for your testimony today. [The following was submitted for the record:]

STATEMENT OF HON. DAVID R. BOWEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. Chairman, I want to thank you and the subcommittee for allowing me this opportunity to state my wholehearted support for House Bill 3848. It was indeed a privilege for me to introduce this very important legislation in behalf of the many blind Americans who today are confronted with a very difficult dilemma. Those blind persons who seek to enter or re-enter our nation's work force stand to lose all Social Security disability insurance benefits if they earn as little as \$200 in a given month. For these citizens the more financially sound alternative is to remain unemployed in order to remain eligible for disability benefits. By yielding to the lure of the route of idleness, however, blind people must resign themselves to an unrewarding existence marked by a loss of self-esteem and a feeling of worthlessness, not to mention the stigma attached by our society to those who are supported by the largesse of Uncle Sam.

As the distinguished members of the subcommittee can clearly see, there is at present a negative incentive for blind persons to remain out of work in order to protect their disability benefits. H.R. 3848 proposes to turn that incentive into a positive one by making any blind person who has worked and paid into the Social Security program for six quarters eligible for benefits for the entire period of his blindness, regardless of any income he might realize from employment. This legislation treats the disability insurance program not as the welfare effort to relieve poverty which some have mistaken it to be, but as the protection against unforeseeable misfortune that is the proper nature of an insurance program. The Social Security Act was not designed as a part of the general war on poverty, but rather as an attempt to compensate for the special problems of the disabled. Our nation's blind encounter as a result of their disability expenses and inconveniences which call for special consideration apart from that given the general problem of unemployment. They must hire their "sight," often for job-related activities such as reading and driving. Since employers generally have less than full confidence in the blind, the blind worker is usually forced to settle for an insecure and low-paying job. These problems peculiar to the blind must be kept in mind when the legislation before the subcommittee is considered.

The major concern of those who have raised questions about H.R. 3848 is of course the cost factor. In September of 1975, in the course of one of the seven previous considerations this bill has received, HEW Secretary Caspar W. Weinberger estimated that the bill would increase the cost of the disability insurance program by approximately 10 percent. It should be remembered, however, that in many cases the new names on the disability benefits rolls would be at the same time removed from those of the Supplemental Security Income program. In essence, these individuals would simply be transferred from the giveaway welfare program to the Social Security insurance plan through which they could receive just compensation for their disabilities while still working and functioning as productive citizens.

More significant is the self-evident fact that the new people that this legislation would bring into the work force would begin paying into as well as drawing from the coffers of the insurance program. The additional tax revenues that would be generated with the advent of the new workers would also contribute toward making this liberalization of the conditions for disability benefit eligibility pay for itself in the long run.

Economic considerations aside, however, the real value of this legislation lies in its promise to restore to useful positions in society large numbers of blind persons presently idle because they actually cannot afford to work. As a result of the negative incentive provided by today's benefit eligibility standards, some 70 percent of our employable blind population is now either unemployed or underemployed. I respectfully submit that this Congress has a moral obligation to take this step toward righting that tragic wrong.

STATEMENT OF HON. TOM CORCORAN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ILLINOIS

I am pleased to have this opportunity to testify before your subcommittee on a matter which has been neglected for too many years.

The idea of extending the coverage given to the blind under Title II of the Social Security Act is not a new one. The 94th Congress directed its attention to assistance programs for the blind in approving the Developmentally Disabled Assistance and Bill of Rights Act. However, there are serious deficiencies in the Social Security program which have not been corrected by this new law, and to resolve them, we in Congress must enact further legislation. The type of legislation which must be enacted by the House of Representatives has been approved by the Senate three times, most recently in 1972. It is time for us to take similar action.

The current law includes two troublesome parts. Let me first outline these present provisions, and then elaborate on their shortcomings.

First, to maintain the definition of this program as true disability insurance, a minimum work requirement is required before one becomes eligible for benefits. But at present the requirements vary, depending on age and the onset of blindness, from a minimum of six quarters to a maximum of twenty-five quarters of work which is covered. Second, benefits received under this Title of the Social Security Act are terminated following the acceptance of employment by the blind, and cannot be received in the future as compensation for the same disability.

As I have stated, there are several problems with the present preconditions to receiving benefits. With respect to flexible work history standards, not only do these complex regulations impede the delivery of benefits as required by law, but they also contribute to the size and growth of paperwork and of the federal bureaucracy. Congress should recognize these problems with variable work standards, and act to simplify the requirement, to the benefit of both the recipients and the general taxpaying public.

This ties in with the topic of an editorial reply recently aired on a Chicago-area television station, WBBM-TV, in which it was pointed out that, in some cases, the flexible work requirement discriminates against those who would otherwise fall under the law as intended by Congress—but do not do so because of the age at which they joined the work force. This discrimination on the basis of age pervades the whole of the Social Security disability insurance program, and a good place to begin correcting this inequity is in the coverage extended to the blind.

Regarding the second provision, one of the basic needs of man is the respect of one's peers. In America, I am proud to say, this recognition is gained largely through the pursuit of excellence in our working lives. Depriving certain individuals of job opportunities results in a sense of hopelessness and alienation from society. The encouragement of the blind to pursue employment should be a basic tenet in the federal program, and the present law strongly discourages this by easily and permanently jeopardizing the receipt of disability benefits. By insuring the payment of benefits regardless of one's employment status, we in Congress can go far to better the lives of the blind.

Another point which is often overlooked when considering legislation pertaining to blind beneficiaries of the disability insurance program is that these people require special assistance in grocery shopping, having printed material

read to them, being transported, and so on, each of which necessitates the employment of sighted individuals. This additional economic burden must be considered by the Congress in designing a program of assistance to the blind.

The matter of the cost of improving the present program has been raised, and for good reason. Fiscal control in the federal budget is high among my own priorities as a Member of Congress. Estimates provided in recent years by the Social Security Administration indicate that these improvements will cost the nation close to \$500 million. This estimate, however, has been disputed by others familiar with the situation, and I tend to believe their assertions that the Social Security Administration's figure is rather exaggerated. In any event, I can assure my colleagues in the House that even should the long-term cost of the program be close to \$500 million, this still is not a prohibitive cost considering the benefits which would be provided to this group of disabled citizens.

Recently I had the opportunity to meet with the members of the Prairie State Chapter of the National Federation of the Blind. Through this meeting, which was held in Coal City, Illinois, I became keenly aware of the reasons why the present program must be changed. The interest in revision of the law was displayed effectively, as was a slight tone of frustration. I believe alterations of the present law must be pursued with diligence by the House in response to this evident need.

Mr. Chairman, today I am introducing a bill which would correct the deficiencies I have mentioned. I wish to call the attention of my colleagues to the strong need for this bill to be enacted. My meeting in Coal City is an experience I will always remember: we in Congress must respond to the plaintive requests of those most unfairly treated by the present law, and we must do so soon. More than fifty of my colleagues have sponsored similar legislation at this time. I urge your subcommittee to consider this legislation, and press for its passage by the full committee and the House of Representatives. Thank you.

STATEMENT OF HON. MENDEL J. DAVIS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF SOUTH CAROLINA

Mr. Chairman, I would like to submit a statement in support of my bill, H.R. 4543, which is identical to a bill you have introduced, H.R. 3049. Both of these bills would liberalize the eligibility requirements for the blind under Title II of the Social Security Act, the Disability Insurance Program for the Blind.

This liberalization is urgently needed, as you know, Mr. Chairman, for the effect on the blind of the present legislation, is to provide an incentive against employment and self-support and provide an incentive toward the acceptance of the stifling, stagnating condition of unemployed receiver of benefits. This effect is produced by the definition of disability in the present program which does not reflect the realities of the disability of blindness. The realities of blindness today are, on the one hand, economic adversity brought about by the widespread misunderstanding of blindness resulting in extremely limited employment opportunities. On the other hand are the hopes and aspirations of these human beings with training, skills, and experience who want to be productive, contributing citizens within a society all too often neglective of the talent of its blind citizens.

In addition to the usual discriminations, blind disability beneficiaries face another barrier on the road toward full integration into society: the earnings limitation which conditions their receipt of disability benefits. Under the present program, the blind person who has become eligible for benefits may, conceivably, receive as much as \$900 a month. He or she may not earn more than \$200 a month and continue receiving the benefits. With the chance of a job that is steady, pays well, and offers advancement opportunities so slim, many beneficiaries understandably choose the monthly benefit from the disability program. Often employers hire the blind for trial periods, letting them go for any number of reasons but keeping them long enough to prove, under the present disability program, that the person can earn a living, thereby making him no longer eligible for any benefits. The resistance of the job market and the danger of losing benefits forever cannot outweigh in economic terms the security of a monthly check for these beneficiaries.

By adopting my bill, Mr. Chairman, we can provide our blind citizens a motive to seek work. The consequences of this encouragement will be massive among the blind: men and women who simply could not afford to work will be able to seek the dignity and independence of a steady job. Men and women who are underemployed will have the opportunity to better themselves and contribute to the national economy. Recipients of Supplemental Security Income and other assistance programs will no longer need to depend on the government for their entire subsistence. And the new and upgraded workers will be able to pay taxes back into the treasury and into the trust funds of the Social Security system.

Mr. Chairman and members of the Subcommittee, as you view the present consequences of the disability program upon the blind during your markup sessions, and as you canvass the possible social and economic benefits for the blind and for all of us, should my bill be enacted. I would urge that each of you conclude, as I have, that the eligibility requirements for the blind should be liberalized. I urge that you include these simple provisions in any package of amendments you report out to the whole Committee. Our blind citizens have asked for your help in this way, and I ask you, as well, to include this bill in your report. Thank you.

STATEMENT OF HON. JAMES J. DELANEY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK

Mr. Chairman, I appreciate this opportunity to present my testimony to you today on my bill H.R. 336 and on the need to improve the program of disability insurance for the Blind under the Social Security Act.

Legislation dealing with this topic has passed the Senate six times since the 88th Congress. H.R. 336, which updates measures which I introduced in previous years, allows benefits for any blind person who has worked a year and a half under Social Security and provides a positive step toward removing many of the disincentives which discourage the blind from seeking employment. Eligibility would continue under the system regardless of earned income.

Although most handicapped persons possess the capacity and desire to contribute productively to the labor force, their efforts to earn their daily bread are often frustrated. Idleness is frequently rewarded with the certainty of a monthly Government check.

Social Security, Mr. Chairman, must be a true insurance policy and not a Welfare System. Enactment of the improvements provided by H.R. 336 would clearly be in the best interest of all concerned. It would give maximum encouragement to the efforts of the Blind to be self-supporting citizens. Those who become gainfully employed will pay Social Security, thus contributing to the System rather than merely drawing benefits. Working blind persons will be taxpayers rather than tax burdens as they assist in furthering the productive output of their communities and gain in self-respect and self-fulfillment. Payments from SSI and other public assistance programs will decrease as the earning power of the Blind increases.

I urge the Subcommittee to give every consideration to the problems of this important segment of our population as it recommends ways to update and improve our Social Security System.

STATEMENT OF HON. JOHN G. FARY, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF ILLINOIS

Mr. Chairman, it has always been my belief that the privilege of employment is closely aligned with the pursuit of happiness. Every citizen deserves, and should be encouraged to lead, a productive existence, one which nurtures a strong feeling of self-worth. This is why I am opposed to the current practice of discouraging an important segment of our population from pursuing employment. I'm referring to the blind citizens of our country who receive Social Security assistance.

I've come here today in support of the Disability Insurance for the Blind Bill, now pending before your Subcommittee, which would correct many of the inequities in the assistance program.

The bill would alter the conditions under which a blind person would become eligible for disability insurance payments under Title II of the Social Security Act. Currently, to be eligible, a blind person must be fully insured, having paid

into the system a number of quarters determined by age and the date employment ceased, and must be earning less than \$200 a month.

The effect of these present provisions, Mr. Chairman, is to encourage the blind beneficiary, once he establishes eligibility, to rely exclusively on the disability benefits. There is no incentive for the blind beneficiary to earn his daily bread by the labor of his own hands and mind since that very actively would jeopardize the continuous arrival of the benefits.

Mr. Chairman, the principle of this bill, which I so strongly support is that we should encourage our citizens to hold productive jobs, not pay them to stay home.

Our blind citizens want to work. But they often face refusal, disbelief, and misunderstanding instead of a job when they seek employment. To these attitudinal barriers, the present disability program places an additional barrier in front of the blind beneficiary: the "earnings limitation". A blind person must choose between the security of a monthly check and the risks and vagaries of the employment market. I know the choice will almost always be the security, and especially so when the well being of a spouse and children is at stake.

I urge the Subcommittee to remove this additional barrier and instead create an incentive encouraging blind beneficiaries to become employed.

The blind who take advantage of the incentive, though they continue to draw benefits, will also be able to contribute to the general revenues and to the trust funds in particular through taxes on their new salaries.

Mr. Chairman, it is not only right to make the economic incentives in the proper direction. We must also consider the moral and human aspect as well. We who are sighted have long failed to recognize that our fellows who are blind have many talents to contribute and want to pay their own way. The Disability Insurance for the Blind Bill recognizes the high hopes and aspirations of the blind and would remove a ceiling which artificially restricts them, making disability benefits into a floor from which they can move confidently to take their rightful place in society. Mr. Chairman, I urge you and the other members of the Subcommittee to act favorably on this bill, and I hope that, as you wrestle with the massive problems now besetting the Social Security system, you will be able, as well, to deal with this problem specifically affecting the blind so that they may be free to pursue their rights to happiness.

STATEMENT OF HON. HENRY B. GONZALEZ, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

I want to thank the Subcommittee for its consideration of my bill to liberalize the conditions under which blind persons can receive disability benefits under the Social Security Act.

My bill is simple: it would allow a blind person to qualify for disability insurance payments under Social Security after working for six quarters in covered employment, and further, allows the blind to receive payments regardless of any additional earnings they may have. Present law does not allow a blind person to continue receiving disability payments, if that person returns to work.

The concept of disability insurance is that such insurance should be available only to a person who is wholly unable to work. However, such a narrow concept is in many ways unfair, and not in the best interest of either the government or the disabled person.

All of us are trained in the belief that work is good, and all of us admire the courage and determination that a handicapped person shows, when that person is able to overcome all adversity and remain a productive citizen. Our social programs stress rehabilitation. Our benefit payment systems ought to reward rehabilitation, and that is what my bill intends to do.

As matters now stand, a blind person who finds work may actually suffer financial penalties if he does work. The income from that person's job may well turn out to be less than the disability payments he is entitled to. In such circumstances, handicapped individuals may find that unemployment, if unhappy, is at least financially more rewarding than most available jobs. We should not continue a system that penalizes those who want to work, as the existing one does.

It can be argued that a person who can work is not disabled, and should not receive disability payments. Our law, however, has for many years recognized that a person can be disabled and productive at the same time, and that such persons can receive disability payments, whether they are working or not. Our

veterans statutes have for decades provided a system of payments based on degree of disability, and it is a wise, compassionate system. These payments are made regardless of any earnings the veteran may have.

A blind veteran is classed as having a one hundred percent disability, and receives a benefit payment of close to a thousand dollars a month, in addition to other benefits. Note this: a veteran receives that benefit payment whether or not he is working, and regardless of any additional income he might have.

A blind person under the Social Security system is, on the other hand, penalized if he is able to work. There is no difference in degree of blindness or degree of handicap—only in treatment. The veteran has every incentive to rehabilitate himself, and is rewarded if he is able to work. The Social Security recipient is penalized for working, and suffers every possible disincentive. There is no reason for having this kind of differential between citizens who are identical in every respect except for the program that they happen to fall under.

In addition to the fact that we should not let this double standard, this inequity, continue to stand, we should understand that a blind person who is working will be less of a burden to the government than one who is not. That person will be capable of paying taxes, capable of supporting any dependents he may have, and capable of contributing to society in a positive way. Anything that encourages this kind of full and productive life ought to be provided; anything that discourages it ought to be rejected.

Blind people do not want to be on welfare, any more than anyone else who is capable of living in any other way. Enactment of my bill will remove a great injustice to blind people under the Social Security program, will encourage rehabilitation, and will, most importantly of all, enable a great many people to live in the kind of dignity and security that we all want for ourselves.

I urge enactment of this bill.

STATEMENT OF HON. MARGARET M. HECKLER, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MASSACHUSETTS

Mr. Chairman, I am appearing here today to testify on behalf of a change in the Social Security laws as they apply to the blind. I am sure I don't have to remind you, Mr. Chairman, nor this committee, of the problems faced by the blind in this country.

Not only do they have a disability that is a most serious and cruel one, they are also forced to face the ignorance, the misconceptions and the discrimination of a society which does not accept the needs of the blind, and which does not accept the fact that the blind DO wish to be independent. DO NOT wish to be supported and subordinated to the rest of our citizens.

That is why this change is so important. It will allow the blind person who has worked more than six quarters in Social Security-covered work to hold employment, while continuing to receive disability insurance. At the present time, an individual will lose his disability insurance if he earns more than \$200 per month.

An individual who, before blindness, earns \$15,000, could, for example, find he cannot get a job that will pay more than \$6,000 after blindness. Yet he is still not eligible to continue to draw his disability insurance, even though the loss of income has occurred.

In addition, it is possible under the present law for an individual to become blind, go back to work, then lose his job, and thereby become ineligible ever to receive disability insurance payments again because by going back to work, he has demonstrated that his blindness does not prevent him from engaging in gainful and substantial activity.

If an individual is born blind, he may be eligible for disability insurance if his parents had a given Social Security status. Otherwise, he cannot qualify.

These provisions must be changed.

The Department of Health, Education, and Welfare estimates that income annually lost to blindness in the United States runs approximately \$1 billion. HEW also estimates that 70 percent of the employable blind population is either unemployed or underemployed. It is important to offer these individuals the opportunity to seek employment, without denying them the security of their disability insurance.

The proposal before you today takes into account the true nature of an insurance system. It recognizes that there are economic adversities that result from blindness, that these economic adversities have an impact on society as a whole and that they can best be met and corrected by providing an insurance which pays in the event of blindness and does not discriminate against the person who wishes to support himself or herself, but who cannot completely earn that support.

There have been arguments that this proposal will cost too much. Yet, through this change, blind persons who find employment will become taxpayers. And they will pay social security taxes, thus contributing to the trust funds rather than only drawing benefits from them.

Under the present structure, the vast majority of blind persons fall into three categories: those who are employed and paying taxes; those who are unemployed and beneficiaries of Social Security disability insurance; and those who are unemployed and recipients of Supplemental Security Income payments.

In other words, the present system is so structured that either a blind person works and helps pay his own way, or does not work and others pay it for him. This legislation removes the negative incentive NOT to work, and provides for an incentive for the maximum use of the talents, abilities and potentials of the blind.

This is extremely important legislation. It is vital to the interests of the approximately 100,000 blind persons who are now receiving disability payments. This legislation has passed the Senate six times, but is always stymied in the House. I urge you to carefully consider this legislation—and the interests of the blind in this country—and to support its passage this year. It is long overdue and will help in some measure to provide the blind with an avenue to become self-supporting, and self-dependent, citizens.

Thank you, Mr. Chairman.

STATEMENT OF HON. KEN HOLLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

I am grateful for the opportunity to appear before you and the Subcommittee. I will keep my remarks brief, fully recognizing the magnitude of the task faced by the Committee.

I have joined a number of my colleagues in introducing legislation that would liberalize the conditions governing eligibility of blind persons to receive disability insurance benefits. The proposal amends the Social Security Act as follows:

Allows qualification for disability benefits to blind persons as defined in existing law and who meet a six quarter minimum work requirement coverage for purposes of the Act;

Continues the payments provided for as long as blindness persists with a \$200.00 outside earning limitation per month.

Through enactment of the above provisions, negative factors which now discourage blind persons from seeking employment would be removed. Rather than only drawing benefits as is now the case, payments would be made into Social Security by those who seek and find employment. These blind persons who do find employment will become tax payers rather than tax burdens, and Supplemental Security Income and other public assistance program payments will be reduced as the earnings of the blind increase. Perhaps most importantly of all, no secure income would be lost to those making an effort to make themselves productive.

This legislation is long overdue. It recognizes the tremendous financial disadvantages confronting our blind citizens. Although most blind persons possess the capacity to be productive in the labor force, their efforts to be self-sustaining are frustrated by a system which rewards idleness with financial security in the form of a monthly check. Under existing law, each blind person receiving disability insurance benefits must choose between alternatives which are often unattractive. He may elect to continue receiving regular benefit checks with the knowledge that even a small amount of income earned from working may jeopardize his eligibility to receive the monthly checks. He may also elect to seek employment in the hope that this would be financially advantageous, knowing that an important means of security is being cast aside by demonstrating

employability to the Social Security Administration. Those choosing the latter of the alternatives must be prepared to take on the everyday problems which go with living in a sight-structured society, one which has not yet totally accepted the idea that the blind are able to compete equally with the sighted in terms of their capacity to work. This fact is seen in typical employer attitudes toward the blind which cause jobs obtained to frequently be low-paying, short-term, and insecure, resulting in the fact that seventy per cent of the employable blind population is either unemployed or under-employed.

It is without reservation that I urge the Members of the Subcommittee to take prompt and favorable action on this pending matter of major concern to our blind citizens.

STATEMENT OF HON. CARROLL HUBBARD, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF KENTUCKY

Mr. Chairman, I would like to state my strong support for H.R. 3049, a bill introduced by Rep. James Burke to liberalize the eligibility requirements for the blind under Title II of the Social Security Act—the Disability Insurance program.

I urge the Subcommittee to incorporate the provisions of this important bill into any package of amendments to the Social Security system which is reported to the full Committee. The need for this legislation is great; the arguments for its enactment are strong. The problems of the blind are too easily overlooked in the sweep of broad issues and billions of dollars. I ask you not to allow the scope and nature of your deliberations to obscure the human needs which would be met by the provisions of H.R. 3049.

The current disability program presents a cruel irony for the blind person. He loses his job due to blindness, and his earnings are likely to be cut in half. He begins drawing disability benefits, knowing that if he returns to work and earns more than \$200 a month, these benefits will stop. The present disability program erroneously concludes that if a blind person earns more than \$200 for nine months, he no longer needs the security the system was created to provide.

H.R. 3049 would change this. It would remove the earnings limitation and allow benefits to continue as long as the disability prevails. One may ask why the blind should be exempted from the harsh earnings limitation, while other disabled groups may face the same problems. After all, if we liberalize eligibility for the blind, will not millions of other citizens suffering from other disabilities demand equal treatment, and will this not bankrupt the system? Certainly this argument has been heard from witnesses from the Social Security Administration. I suspect these witnesses do not understand the special position the blind hold in our society. This argument can be answered. I have long been a friend of the man who has recently been appointed Director of Rehabilitation Services for the Blind in my State of Kentucky, Mr. Charles McDowell. The privilege of his friendship may enable me to see through what may be a dilemma to others.

The truth of the matter is that the blind are a special case. Blindness has been feared more than any other condition—from Roman times when blind babies were put out for the wolves, through the Dark Ages when defeated leaders were blinded as a means of ensuring their helplessness, right up to the present as is evidenced in the treatment of blindness in newspaper stories or on television. Yet, as our civilization has developed and become more specialized, blindness has become less of a handicap. Modern society places a premium on the use of the mind or on the performance of specialized, repetitive tasks. Blindness is actually an insuperable handicap in only a very few occupations such as taxi driving. Beyond this, blind persons successfully hold jobs many persons might have difficulty believing could be held by persons without sight.

This is what makes blindness a special case. Although the loss of sight is a minor handicap in terms of limiting work ability, it is by far the most disabling handicap in terms of finding and holding remunerative jobs. Because it is a condition with a history, and because the blind are so few and often so unfamiliar to sighted employers, the blind face a barrier of prejudice and disbelief so high and so strong that their career potential is restricted to a degree not shared by any other groups of the disabled. This intangible but very real social handicap continues unabated throughout a blind person's life, whether he goes back to work or not. The jobs he can get and his opportunities for advancement are perpetually circumscribed by the deeply engrained beliefs of employers.

This contrasts dramatically with the situation facing those disabled in other ways. A person who is crippled by an accident, for example, is not regarded as having additional hidden disabilities. Unlike the blind person, he is not suspected of having lost mental perception along with the use of his limbs. In practice, he is more likely to be given a chance to self-determine the limitations resulting from his disability. In part, this can be attributed to the wide range of degree of limitation caused by physical injury. Such a person does not run up against a concrete stereotype, as the blind person does, and he will often be given a better chance to show what he can do. Indeed, he will often be encouraged by his former employer, and helped to expand his own belief in his remaining capacities.

Furthermore, this physically handicapped worker will be allowed to retain and build on the results of his efforts. For the blind person, however, successful work experience (or "substantial gainful work" in the language of Social Security) is no guarantee of the ability to be self-supporting. In the present societal climate, no degree of success can guarantee a blind person that. As I have stated previously, the real handicap which prevails throughout a blind person's life is the negative attitudes he will face.

Equally refutable is the argument that if eligibility requirements for the blind are liberalized, they must be liberalized for all handicapped persons, and that this would be beyond our financial ability. This argument implies two things: It implies that the special treatment afforded the blind would amount to arbitrary favoritism, and that there can be no reply to other disabled groups demanding to know why they are not afforded the same treatment. The argument is easily refuted through example. Medical care is provided to the indigent elderly, but not to others. Free education is available to young people, but not to many adults. The cogent reason for these alleged inequities is that these groups have unusual needs, and that it is beneficial to society and within its power to provide these services.

The second implication is that the enactment of H.R. 3049 would trigger an irresistible trend toward broadened eligibility leading to the inevitable bankruptcy of the Social Security system. This implication is foolish. The incredible task the blind have had in bringing their pressing needs to the attention of the Congress should allay any fear that we are about to run amok in expanding the program to the point of bankruptcy.

Thus, the provisions of H.R. 3049 deal reasonably with specialized and very real problems in the disability program. Solving these problems is a goal worthy of our commitment.

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF VERMONT

I appreciate this opportunity to submit written testimony on the subject of increased Social Security benefits to the blind.

I have introduced legislation identical to that of my distinguished colleague, Mr. Burke of Massachusetts, which would open the door of the working sector of American working life to our blind citizens. The measure would give blind persons a greater opportunity to achieve self-sufficiency, a goal from which they are now too often barred. For too many years we have force fed our blind citizens and condemned their efforts towards independence. We have found it easier to spoon feed them rather than allowing them to handle their own forks. And when they do utilize their capacities for self-sufficiency, we pull the plate from them and tell them that they no longer deserve our gravy. There is nothing fair or righteous about denying the blind due benefits after they achieve the \$200 per month earned income cut-off level. The individual who has dutifully labored for six quarters deserves the benefits he has gained while in competition with the sighted.

No longer should we force idleness or label as "unemployable" those who wish to become self-sufficient and aspire to be productive.

Just as we financially insure the sighted worker in case of incapacitation, let us increase the disability insurance to those members of the blind community striving to compete in a sight structured society. This bill would enable blind persons to contribute actively and responsibly to our Social Security and tax systems rather than to tap, reluctantly and shamefully, the veins of welfare. This

legislation will create a positive incentive for the blind, to become self-supporting.

In recent years, the Congress has mandated that recipients of federal funds tear down curbs and install elevators to give our disabled citizens access to normal and productive lives. Yet we have also succeeded in erecting financial barricades that block the light of happiness and productivity for the blind and creating, instead, demeaning dependence.

Mr. Chairman and members of the committee, let us hastily demolish those carriers and return pride and self esteem to the sightless members of our society. Now is the time to erase our record of sluggish actions and remove ourselves from the great lists of "those who will not see".

Thank you, Mr. Chairman and members of the committee, for this opportunity to address this matter.

STATEMENT OF HON. JIM LEACH, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF IOWA

Mr. Chairman, it is with much pleasure that I testify before this distinguished Subcommittee to explore with you the possibilities for improvements in the Social Security Disability Insurance program, and particularly those provisions which govern the conditions of eligibility for blind persons. I am especially happy to lend my support to H.R. 3918 because my State of Iowa is known as a leader in efforts to provide and improve services for the blind. We are very proud that the national headquarters of the National Federation of the Blind is in Des Moines, and I know that the members of this Subcommittee are well aware of the outstanding work of that organization.

While I acknowledge that this proposal will mean some increased cost to the government, I contend that we must have as a priority a commitment to providing incentives for people to become more productive and to earn their own way in the world and, thereby, to enhance human dignity. Seventy percent of the employable blind population is either unemployed or under-employed. For the most part, these are people who want to work and who are capable of greater productivity but who are held back by societal prejudice. Unfortunately, employer attitudes often result in jobs for the blind which are short-term, insecure and low-paying. The achievement of equality for any disadvantaged group is difficult, but society has the obligation to remove as many obstacles as possible. The legislation we consider today would remove one of these obstacles.

Presently, those who are blind and receiving social security disability insurance benefits are confronted with the reality that they may lose financially through their efforts at employment. Under the current law, too often long-range economic security belongs to those beneficiaries who remain idle, rather than to those who strive to become productive. Obviously, Mr. Chairman, this is wrong. We need to provide a system whereby people can retain their dignity and increase their contribution to their society.

This bill encourages and supports the efforts of blind persons to be self-supporting. Those who secure employment will pay social security taxes, and thereby contribute to the trust funds rather than merely drawing benefits from them. In addition, they will reduce the drain on general revenues by payment of regular income taxes. Finally, most of the blind who are currently recipients of supplemental security income will be able to move into the improved disability insurance program, which will result in a savings in welfare costs. Part of the costs of the program will thus be recovered through institution of the program itself.

In conclusion, Mr. Chairman, I wish to emphasize that providing this system of positive incentives to find employment makes immeasurably more sense than our current position of discouraging work and production. Again, I want to reaffirm my support of this measure and I thank you for this opportunity to express myself to the Subcommittee.

STATEMENT OF HON. CLARENCE D. LONG, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MARYLAND

I endorse legislation to provide for Disability Insurance for the blind under the Social Security program, legislation that will have beneficial effects both for the blind and for American society as a whole. By being assured of disability

payments, blind persons will be encouraged to find productive work without fear that their benefits will be reduced. Instead of encouraging people to not work, as the present benefit structure does, this legislation would encourage the blind to risk trying different kinds of jobs.

Disability payments are all the more necessary for the working blind, because they incur expenses in the working world that sighted persons do not. In addition, because of widespread prejudice among employers against the blind, low-paying jobs are often their lot. Disability insurance will help the blind cope with problems specific to them.

This legislation will be good for all of us because, by encouraging blind persons to work rather than be idle, we gain taxpayers and productive workers.

STATEMENT OF HON. STEWART B. MCKINNEY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CONNECTICUT

I appreciate this opportunity to testify in behalf of legislation I have helped introduce, H.R. 7277, Disability Insurance for the Blind. I recognize that the Social Security system faces serious solvency problems and that some very difficult decisions must be made regarding the extent of coverage and the funding mechanisms. Yet I also believe that any restructuring of the Social Security program should include this measure which has a twofold thrust: to establish eligibility for disability insurance benefits to blind persons who have worked six quarters under Social Security-covered employment, and to continue this eligibility regardless of the earned income of the blind person.

In recent months we have witnessed the promulgation of regulations by the Department of Health, Education, and Welfare to prohibit discrimination against handicapped persons in employment, education and health care, regulations which in large part mandate the removal of physical obstacles to the handicapped. We have also witnessed the convening of the first White House Conference on the Handicapped. It is therefore most appropriate that we follow up on these efforts of the handicapped to be a self-supporting and productive members of society by removing a social and economic obstacle to their progress which is embodied in the Social Security statute. I refer to those provisions which set restrictive work requirements which do not take into account the unique and often overwhelming discriminations which face the blind. Indeed, the law as it stands today encourages the blind individual to be a ward of the state by placing him in the position of losing financially through the pursuit of employment.

Today, an individual who becomes blind and consequently ceases to be substantially employed is likely to be eligible for disability insurance. No one questions the value of disability insurance compensating for the lack of opportunities and services which limit earning power. Rather, the problem arises from that aspect of the law which mandates that even a small amount of income earned from work—as little as \$200 a month—may jeopardize entitlement to the monthly disability check which may amount to as much as \$800 a month tax free, if the individual has dependents. Obviously he loses his shirt, so to speak, by seeking employment. The law is devoid of any work incentive. Moreover, if a blind person returns to work it is possible that, should he lose his job, he becomes ineligible ever to receive disability insurance payments again because by working he demonstrated his employability to the Social Security Administration. The law—with its complexities and myriad provisions regarding allowed earnings, trial work periods, definitions of gained and substantial employment, etc.—is confusing and far from conducive to the blind individual's attempt to begin a new life.

In effect, the law rewards unemployment and idleness by offering financial security through the certainty of the disability check, month after month, year after year. It would indeed be suicidal to jeopardize such a secure existence for the uncertainty of working in a sight-structured society. Moreover, by working he incurs additional financial burdens for he must pay for "sight" in job-related activities such as reading or driving.

In addition to the dismal monetary aspects, the blind must also face the anxieties that accompany venturing into the sighted world. While the blind are daily demonstrating the will and capacity to assert their rightful place next to their sighted fellowman, they continually encounter a world which is not yet ready to accept the reality that the blind are able to function as well

as the sighted. Seldom are the blind able to fully exercise their talents and capabilities in the labor force for, as a result of thoughtless discrimination, their employment opportunities are usually short-term, insecure, and low-paying. It has been estimated that 70 percent of the employable blind population is either unemployed or underemployed. And as a result of the limited employment opportunities available, many blind persons are unable to work long enough in Social Security-covered employment to meet the existing work requirements.

Enactment of H.R. 7277 would provide for maximum utilization of the talents, abilities and potentials of our blind citizens by continuing eligibility for disability insurance to those who attempt to make themselves productive. The blind individual would thus have every incentive to venture into the sighted world for he would not be jeopardizing his security by trying to to improve his condition and be a contributing member of society. There are those who will object that the legislation amounts to preferential treatment—a subsidy, in effect—for the blind by entitling them to a monthly disability benefit while they earn income. I will not attempt to deny the element of preference but we must look at the total picture, that the secure monthly disability benefit is an investment in our society and our future, a vote of confidence in our handicapped citizens. It is unacceptable and unpardonable for us to encourage anyone in our society to be idle rather than productive, to waste their talents and abilities, to live off the public dole. With enactment of H.R. 7277 the blind no longer would have to choose whether to remain idle but secure, or work but live precariously.

As I mentioned previously, I realize the Social Security system faces serious funding problems. I recognize too that H.R. 7277 has been estimated to cost several hundred million a year in additional Social Security benefit payments. However, these cost-estimates do not take into account the fact that new revenues would be paid into the Social Security trust funds by employed blind Americans. In addition to paying Social Security taxes, they would also be paying income taxes, thus also reducing the drain on general revenues. And as the blind work and earn more of their income for themselves, there will be realized a significant savings in public assistance costs.

Mr. Chairman, visual impairment ranks third among diseases that restrict Americans from leading productive lives. The economic aspects of blindness are staggering in terms of the annual potential income lost, the loss of potential tax revenues, and the expense of blindness to public welfare agencies. The social costs are inestimable. While I realize that immense demands are placed upon the Social Security program and on the Federal budget, I believe H.R. 7277 deserves special consideration and that this legislation should be included in the decisions made to improve our Social Security System. Instead, I believe the concept embodied in this legislation should be incorporated into the Social Security disability program as a whole—the need to encourage people to venture once again into society and strive to be productive. We need to rethink the thrust of the Social Security disability program which now rewards uselessness and H.R. 7277 may well prove the key to a basic restructuring.

STATEMENT OF HON. PARREN J. MITCHELL, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MARYLAND

Mr. Chairman, I appreciate the opportunity you have provided your fellow Members of Congress to speak before this Subcommittee. I appear today in order to urge a favorable vote for H.R. 3049. H.R. 3049 would liberalize the eligibility requirements for the blind under Title II of the Social Security Act, providing disability insurance benefits for the blind who have paid into the system any six quarters. Under the present law, blind persons receive benefits only when they achieve what is called the "fully insured status." Once all the technicalities and qualifications are stripped away, this means that blind persons must have worked and paid into Social Security during sometimes as few as six quarters but sometimes as many as twenty-six quarters, depending on their age. The present requirement thus is complicated, and, in practice, works a hardship on our older citizens who become blind in later years. This is a population which usually suffers most from blindness in any event. This bill would standardize the requirement in a just and equitable way. It would also eliminate the limit on the amount which can be earned without losing benefits altogether.

It has been my pleasure to work with the blind of Maryland in many and various areas in order to improve legislation which affects the blind. But this bill

has the potential to open more fields to the blind than any other piece of legislation I have seen. Let me explain why I think this is so.

Let us take an example. A man works as an insurance salesman, a job which requires, in his case, a good bit of driving. He then becomes blind. His company, not being aware of the many blind persons earning their income in the insurance profession, no longer wishes to keep him in their employment. He must learn how to live and function as a blind person, and he may have some difficulty in believing that, with the proper training and opportunity, there is no reason why he could not continue to sell insurance. After all, he, like the majority of us, has not been taught that blind people have the capability to live normal lives and perform on the job as well as their sighted counterparts. And even if he does gain in his own abilities, he will face the problem of convincing an employer to hire him. He will have to learn to live with an income lower than the one to which he had become accustomed. And under the present disability program, he will have to bear most of the financial losses and costs brought on by his blindness. After living under these circumstances for several years, he may have the opportunity to go back to work as an insurance salesman. He will have the additional expense of hiring a driver for the rest of his life. If he tries and succeeds, he can return to nearly the same level of income as he earned before blindness. But he will continue to have added expenses which he never incurred before. He will, in addition to the driver, find it necessary to pay readers, enabling himself to keep current in his field. He will find that what little Braille material is available is extraordinarily expensive to buy.

But what if he fails? If he has worked for more than a year before losing his job, he will find he is no longer eligible for disability benefits due to the operation of the present earnings limitation.

Your bill would address both the problem of incentive to work in the first place and the problem of added expenses. Benefits under H.R. 3049 would not be based on income. Disability insurance for the blind would become a real insurance program based on the economic consequences of blindness rather than a welfare payment triggered and cut off on the basis of need. If my salesman succeeds in his attempt to become employed, he would have an insurance payment to help with the extra expenses involved in performing a job and living a full life. If he fails, he can still fall back on the secure floor of the disability benefits payments.

The blind now suffer unaided almost all the financial losses consequent to blindness today. By spreading the cost over the entire society, we can encourage our blind citizens to work and also assist them with the extra expenses they confront—as well as lessening the threat of hardships attendant on blindness for all Americans, any one of which might someday face the losing of sight.

I have enjoyed working with the National Federation of the Blind of Maryland. It would give me great pleasure to report to them the passage of this important bill. We must move forward in helping the blind to live full, normal lives in society. I urge you, members of the Subcommittee, to report the provisions of H.R. 3049 within any package of amendments you may send to the full Committee for consideration. Thank you.

STATEMENT OF HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW YORK

Mr. Chairman, Members of the Subcommittee, I am before you today to urge your support for an amendment to Title II of the Social Security Act which would broaden the conditions governing the eligibility of a blind person to receive disability benefits.

When a blind person, or any person for that matter, is penalized for obtaining minimum income-producing employment yet can enjoy financial security only by remaining dependent on some form of governmental assistance, there is a need to revise the law. My legislation, H.R. 1065, would allow such blind citizens to engage in productive work without forfeiting disability benefits needed to supplement their income to subsistence levels which, in many instances, require more specialized and therefore more expensive living costs.

However, before getting to the specifics of my bill we should look at some of the distressing facts common to the plight of the blind American worker.

Many, many employers regard blindness as a total handicap which is insurmountable. They seem to have the attitude that there is no job which a blind

person can do adequately, let alone as well as a sighted person. This myth—and it is a myth—tends to be self-perpetuating; a business refuses to hire a blind person, thereby denying itself the opportunity to have a blind worker demonstrate his abilities.

Possibly the most disheartening fact facing a blind person seeking employment is that the vast majority of jobs available to him are short-term, insecure and low-paying. As you may know, the U.S. Department of Health, Education and Welfare recently estimated that 70 percent of the employable blind population is either unemployed or underemployed.

Once employed, the blind worker must expend a substantial amount of money to "hire sight." Activities which we take for granted such as driving to work and reading material necessary to the performance of our jobs, become major obstacles for the blind worker.

The situation is even more frustrating, if that is possible, for those who lose their sight after becoming a member of the work force. These individuals generally face rejection in the field they were once a part of and the real possibility that their earning ability will be cut in half, providing of course they can find a job at all.

One fact that we must not lose sight of in this discussion, and the principal reason I am here today, is that if a blind person is able to overcome these obstacles—obtain a job and receive a decent wage—he is denied disability benefits, even though his salary may be insufficient for him and his family to bear the heavy financial costs of his affliction.

The blind person is thus forced into a "damned if you do, damned if you don't" situation. He must choose to continue receiving his monthly disability check, no matter how inadequate it may be, or to seek employment knowing that an income as small as \$200 per month will jeopardize the modicum of financial security supplied by the arrival of a monthly check.

In effect, present law rewards idleness and penalizes initiative. My legislation would change this. H.R. 1065 would place maximum encouragement and support behind the efforts of the blind worker to be self-supporting. This bill would liberalize the eligibility requirements to allow those who have worked a minimum of six quarters in Social Security-covered employment to be eligible for blind disability benefits. This eligibility would continue regardless of the income of the recipient.

This revision would allow the blind worker to again become a contributing member of society. Rather than draining the social security trust funds, the working blind will pay into these funds and also contribute to our general revenues through income tax.

Social security was designed as an insurance system, not a welfare system. Unfortunately in this instance this mission has been hampered by overly restrictive laws. We can correct this inequity if legislation such as mine is enacted.

I know the Subcommittee will study this proposal carefully and I trust each member will see fit to give his support to the passage of this legislation.

STATEMENT OF HON. WILLIAM H. NATCHER, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF KENTUCKY

Mr. Chairman, I want you to know that I appreciate the opportunity to speak in behalf of H.R. 3766.

As you know, Mr. Chairman, this legislation provides for blind persons who have worked six quarters or a year and a half, under social security covered employment, to both qualify for and draw disability benefits so long as they remain blind and to receive benefits regardless of their earnings.

I am certainly aware of the many demands for an equitable Social Security program and I respect the efforts made each day in this regard, however, any consideration of improvement of the Social Security System must include the needs of the blind.

Under the present system blind individuals receiving social security disability insurance benefits frequently can increase their earnings only at the risk of losing the security of insurance benefits.

Mr. Chairman, I am sure you will agree with me that the hardships that blind persons encounter each day in the areas of transportation, housing and

public accommodations along with our attitudes to erect them to a stagnant position in society impose more of a handicap than the blindness itself.

This bill will encourage and support the efforts of the blind who wish to be self-supporting and productive individuals. We must not encourage idleness in an individual who is ambitious and must each day challenge himself. The blind possess an extra quality—that extra effort that is required to function in a world that has been formed for those of us fortunate enough to have vision. It is not wrong to make exceptions in the earning capacity for disability insurance coverage for persons intent on overcoming obstacles who wish to devote that extra effort required.

In further support of this bill, Mr. Chairman, I wish to point out that not only do the blind suffer discrimination from the educational opportunities available to increase their daily earnings and secure their futures, but they encounter special service costs such as transportation costs, on a routine basis. I believe the disability insurance benefits should compensate for the extra expenses they incur.

Finally, I do wish to point out that individuals who are blind but are free to work up to their earning capacity will not only be taxed on their earnings, but will not have to draw upon the Supplemental Security Income and public assistance programs and will contribute rather than draw from our society.

Mr. Chairman, the legislation now before the Committee gives us a chance to encourage our blind citizens to lead productive lives and place themselves in positions of respect and self-fulfillment.

STATEMENT OF HON. RICHARD NOLAN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MINNESOTA

While my focus this morning is on an amendment affecting the disability insurance program with respect to the blind, I want to also briefly express my strong support for another major reform bill I have cosponsored. Congressman Fraser and Congresswoman Keys have proposed far-reaching legislation to equalize the treatment of men and women under the social security system; their proposal would go a long way toward eliminating the sex-role stereotyping built into the system forty years ago. Our government has supposedly committed itself to wiping out sexual discrimination in this country, but there's a hollow ring to all our fine speeches and a cloud over our past accomplishments as long as we allow a program as all-encompassing as social security to continue its blatant discrimination against women. I hope this subcommittee's commitment to meaningful reform will assure favorable action on the "Equity in Social Security for Individuals and Families Act."

My main purpose in testifying here today is to call attention to H.R. 4212 and similar legislation that would make the social security system more justly responsive to the needs of the blind. There are over 475,000 blind persons in the United States today according to HEW's Office for the Blind and Visually Handicapped. Of the additional 34,000 who lose their sight each year, about 15,000 are within the working-age range. The present Social Security Disability Program provides for coverage of the blind under a formula based largely on age and quarters paid in. Under the earnings limitation provision, only those earning less than \$200 a month are entitled to benefits, and sometimes earnings as little as \$140 a month can cancel benefits. H.R. 4212 would standardize and simplify the acquisition of "fully-insured" status for the blind by granting disability benefits to those who have paid into the system for 18 months. In addition, it would eliminate the earnings limitation altogether with respect to the blind.

By liberalizing the eligibility requirements for the blind under the disability program, this legislation would allow the system to address the needs of the blind in two ways:

First, the bill recognizes that the earnings problems that follow the loss of sight are far more a product of social attitudes than of any actual loss of capability to work. Recent government studies in connection with the promulgation of the 504 Regulation have estimated that 70 percent of the employable blind population is unemployed or underemployed. On the average, a person can expect his earning power to be cut in half after loss of sight, if he can convince an employer to hire or rehire him. More than likely, the terms under which he

will be hired will reflect the employer's misgivings about his ability and he will probably only be hired on a trial basis.

The losses suffered by blind people are not in the areas of knowledge, skills, and experience. As the 504 Regulations recognize, the blind are as productive as their sighted counterparts, but societal attitudes and prejudices run deep. We in Congress should recognize that the responsibility for the economic hardships suffered by the blind are largely a result of employer attitudes, including the federal government, who either decline to hire the blind altogether or admit them only to the lowest-level, lowest-paying jobs. Recognizing this basic fact, we must carry through the original concept of the Social Security program by entitling any fully-insured blind person to disability benefits solely by reason of his blindness.

The second way this amendment addresses the basic needs of the blind concerns the need for incentives to fight the attitudes and find employment in spite of them. Under the present system, if a machinist earning \$12,000 a year becomes blind, he and his dependents may be eligible for as much as \$900 a month in benefits. But if he finds employment paying him more than \$200 a month, he will lose those benefits. Obviously, the system's design encourages the beneficiary to opt for the security of a monthly benefit check rather than chance the uncertainties of a prejudiced job market. Incentives should work in precisely the opposite manner. An incentive not to work is poor social and fiscal policy; incentives to contribute to one's self-support are both possible and logical. This legislation would turn the incentive around so that our blind citizens who want to work and be fully contributing members of society could afford to do so. They would be paying taxes into the treasury and they would also be contributing their payroll taxes to the trust funds, further justifying the security provided them by the system.

Mr. Chairman, I urge you and every member of the Subcommittee to make certain these provisions are reported favorably to the full Committee and then to the Floor of the House.

STATEMENT OF HON. CARL D. PERKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. Chairman and distinguished members of the Subcommittee on Social Security. I want to thank you for the opportunity to state my views before this subcommittee on a subject that is very important to many Americans.

It is a privilege to be able to introduce and speak on behalf of H.R. 1146, a bill to liberalize the conditions governing eligibility of blind persons to receive disability insurance benefits. I believe the changes suggested by H.R. 1146 are among the most necessary and important improvements in existing law which could be made at this time on behalf of the blind.

The Congress has a history of legislative initiative on behalf of blind Americans which dates back to Title X of the Social Security Act giving public assistance to the blind in the 1930's and the Barden-LaFollette Act including the blind in rehabilitation programs in 1943. I have the privilege of serving on the Committee on Education and Labor, and our Committee has had a continuing interest in the welfare of all handicapped Americans. An expanded Rehabilitation Act, the Education for All Handicapped Children Act, and an improved Randolph-Sheppard Act are a few recent examples of our Committee's work in this important area.

However, we have a long way to go in dealing with this national problem, and I believe the passage of H.R. 1146 would be a significant step in the right direction.

Our present program for disability insurance is very inadequate for dealing with the problems of the blind. Figures indicate that as much as seventy percent (70 percent) of the employable blind population is either unemployed or underemployed. For the person who is born blind, the problem is particularly acute. He or she may only be eligible for disability insurance if his or her parents had a certain Social Security status.

Under present law, a blind person who drops out of the labor force has no incentive to return to work at all. In the first instance, an enormously complex set of rules and regulations confront the blind individual who attempts to enter the job market after being eligible for disability benefits. The talk of allowed

earnings, trial work periods, and definitions of gainful and substantial employment is both confusing and also frustrating.

If a blind person chooses to re-enter the job market in order to return to the former status of a family-provider, the individual must realize that by doing so he or she may be risking that measure of security which the present disability benefit program provides. If the person demonstrates to the Social Security Administration that he or she is employable, the monthly check and all future benefits based upon blindness will be lost—regardless of whether the job proves financially rewarding or even ultimately successful. In fact, if the individual goes to work for longer than a specified trial work period, and is making more than \$200 dollars per month, he or she may lose the disability insurance benefits even though the person was receiving considerably more than \$200 dollars each month in benefits. The blind person may even have been receiving as much as \$800 dollars per month tax free if dependents are taken into account.

The government should encourage the blind to lead vigorous, productive lives, and should by no means contribute to the disincentives which those individuals must overcome in order to adjust to their condition. In the past, the Congress has been active in encouraging rehabilitative services and other programs designed to assist the blind to adjust so that they might lead normal lives. It would be very inconsistent indeed, if Congress continued to permit the present disability insurance structure to frustrate the objectives of our rehabilitative programs.

The blind already face economic barriers which interfere with their entry into the job market. They inevitably encounter certain costs involved in competing with persons who have normal vision. Most blind people employ sighted readers, drivers, and other workers to perform tasks which require vision. It is not uncommon for the costs of employing those persons to run as much as \$200 dollars per month—the amount at which the individual's disability benefits would terminate under the present regulations. Furthermore, simple braille tools like dictionaries or other reference books can cost the blind worker hundreds of dollars in extra cost that the sighted worker can avoid.

H.R. 1146 would help to remove the negative incentives which discourage the blind from seeking employment. No secure income will be lost to those individuals who choose to make themselves productive under the provisions of the bill. A person could qualify for disability insurance benefits if he or she is blind according to the generally accepted standard for blindness and has at least six quarters of Social Security-covered work. Benefits under the program would continue as long as his blindness lasts irrespective of his earnings. Importantly, H.R. 1146 would at last give the blind a chance to re-enter the labor force on a more equal footing.

While it is true that the cost of the changes made by H.R. 1146 is significant and substantial, the costs are fully warranted by the benefits to be derived from this legislation.

First of all, there is substantial program overlap between the disability insurance programs such as SSI. Increases in disability benefits can be expected to result in savings in benefits currently payable under other assistance programs.

More importantly, as the new disability insurance program increases the incentive for the blind to become more productive, the federal government can expect higher revenues through the income tax and the social security tax which will be generated as a direct result of the approval of H.R. 1146.

I strongly urge you to act favorably on H.R. 1146 to liberalize the current conditions for eligibility of the blind in disability benefit programs.

STATEMENT OF HON. RICHARDSON PREYER, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NORTH CAROLINA

Mr. Chairman, I have long supported legislation to improve disability insurance for the blind. The blind are perhaps among the most neglected element of society, in that we often assume that a blind person with full faculties of mind is perfectly capable of functioning independently.

This simply is not the case. A blind person is dependent on others for mobility, and by necessity, incurs great costs through hiring helpers. Current law serves as a disincentive to the blind person who seeks employment. He or she is told, in effect, that one's employment is grounds to revoke disability payments. The effect is obvious: the blind have little alternative but to reject employment so that they can claim disability, and continue functioning.

The legislation before us today seeks to resolve this inequity by encouraging the blind to be productive, working members of society. We are interested in preserving the right of the blind to pursue their goals and dreams. We are also interested in providing them with the resources for fulfilling those dreams.

STATEMENT OF HON. JAMES H. QUILLEN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TENNESSEE

I appreciate the opportunity to testify on behalf of my bill, H.R. 3948, which is identical to H.R. 3049, a bill introduced by you, Mr. Chairman. As you know, our bills would liberalize the eligibility requirements for the blind under Title II of the Social Security Act, the disability program.

The liberalization I seek focuses on two aspects of the disability program which presently result in inequities and disincentives for the blind: the achievement of fully insured status and the earnings limitation.

Presently, to be declared fully insured and thereby eligible for benefits, a blind person must have paid into the social security system for a certain number of quarters individually determined in each case. Though the principal criteria are age and date of the start of disability, the actual equation for determining fully insured status is involved and complex. This creates a situation where the blind person cannot easily know his or her rights and where officials can easily err on the conservative side, denying benefits to those who, under other interpretations, would be eligible.

The eligibility formula also works an inequity on older Americans who may be required to have paid in as much as twenty quarters more than their youngest counterparts in order to receive the same benefits. And yet, bearing the economic burdens of old age as well as blindness, these citizens need disability benefits all the more.

My bill, and yours, Mr. Chairman, would simplify the formula and eliminate the inequities by declaring all blind persons to be fully insured and eligible for benefits after six quarters covered employment.

Even more pernicious is the disincentive to return to work presently existing in the program, because it reinforces the widespread social signals already urging the blind to remain idle. The blind, Mr. Chairman, suffer under a severe handicap. Yet the greatest handicap is not, as commonly thought, the loss of sight. It is the almost universal belief that blindness causes helplessness or carries with it loss of mental perception and manual skill. This is translated into a belief by employers that a blind employee will not only be of no use in a job but that he or she will sap the time and attention of other employees. It is a belief that the whole job to be done will have to be altered and simplified and very likely that the office will have to be adapted at great expense and with a loss of efficiency. These are myths, as the experience of many blind persons working efficiently in unadapted work situations show, but there is no question that these false beliefs about the capabilities of the blind are almost universally held.

Mr. Chairman, even when an employer, responding to some feeling of guilt or charity, offers a blind person a job, these myths cause that job to be at a menial level; and the employer most often has no intention of upgrading it no matter how the blind person may perform. Indeed, faced with such attitudes, most persons—blind or not—would feel little encouragement to perform to the highest limits of their abilities.

The earnings limitation in the disability program adds greatly to the negative incentive of society's attitudes. If the blind worker manages to work for nine months and at the end of that time is making even as much as \$200 per month, he or she will be declared ineligible to receive benefits.

Knowing that their jobs are often the result of charity, that there is likely little future or possibility of advancement, that the job may end when the charity is exhausted, and that on top of all of this, they may lose substantial benefits for even attempting to become self-supporting—the blind cannot be blamed for not trying at all. Thus do we compound the limiting effects of society's negative stereotype by means of an assistance program which fails to focus clearly on the disability and its economic context.

Mr. Chairman, all of this is grossly unfair to the blind. A person who loses his sight has such a negative image to contend with that our efforts must be to allow him to overcome this. It is in the interest of society to put the blind person

back to work. Our society is based on the notion, proved in all our economic experience, that the possibility of financial betterment is the most powerful spur to ingenuity and productive effort. Let the blind person realize that he has a minimum financial security in his continuing eligibility for benefits, and that this will not be jeopardized by efforts to better his situation, and human nature will do the rest.

This is the essence of wise social policy, Mr. Chairman, and the goal toward which all of our assistance programs should strive. It is embodied in the bills which, Mr. Chairman, we have introduced.

Mr. Chairman and members of the subcommittee, I urge that you include H.R. 3948 in any package of amendments you report to the full committee. The blind of my district and the blind of the country will greatly benefit from the passage of this bill, and so will our society as a whole.

STATEMENT OF HON. ROBERT A. ROE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

I, Robert A. Roe, Member of Congress, State of New Jersey, am honored and privileged to have the opportunity to submit this statement in support of the legislation (H.R. 1293) which I have introduced that would amend Title II of the Social Security Act so as to liberalize the conditions governing the eligibility of blind persons to receive disability insurance benefits.

This is among the most important pieces of legislation affecting the blind ever introduced. Surely it ranks with Title X of the Social Security Act giving public assistance to the blind in the 1930's, the Randolph-Sheppard Vending Stand Act in the 1930's, and the Barden-La Follette Act including the blind in rehabilitation in 1943. The provisions called for in H.R. 1293 are simple and far-reaching. Regardless of his income or earnings, any blind person who has six quarters of employment, during which he has paid into Social Security, will be eligible to draw disability payments as long as he remains blind.

This legislation has a long history in the Congress having been first introduced by Senator Hubert Humphrey in the 88th Congress. Passage of the bill through the Senate was obtained six times, but the principal provisions were lost in Senate-House conferences.

This time it must be enacted into law. It is morally right. To thousands of blind people it will mean a difference of thousands of dollars.

One might ask whether it is really fair for a blind person with a high income to draw a monthly insurance payment. Should we talk about equal opportunity for the blind and their ability to compete and, at the same time, ask for preferential treatment for them?

Your answer will depend on whether you view the proposals in this legislation as true insurance or as a welfare payment to relieve the distress of poverty. The concept that society should give payments or subsidies to particular individuals or groups on the basis of something other than poverty or economic need is neither new nor revolutionary.

For example, a poor man who is childless is taxed to help pay for the public school education of the children of a rich man. Society has determined that such a system is in the best interests of the State and the nation, that all children must have the opportunity to attend public schools. Therefore, a subsidy is given to those who have children, rich and poor alike, to meet a social need. Another group, rich and poor farmers alike, are paid support prices and subsidies because the Congress has determined that a social need is met by the provision of the subsidy. Various types of subsidies are given to railroads, the airlines, the United States mail system and other groups. Therefore, the principle is firmly established that society may pay a subsidy if a social benefit results.

What social benefit would result from providing disability insurance for the blind?

At present if a person becomes blind and ceases to be gainfully employed, he will become eligible to draw disability insurance. He is encouraged to remain unemployed and not to return to work at all under present laws and regulations. If he actually returns to work and makes some two hundred dollars per month, he will lose his disability insurance payments which, if he has dependents, may add up to over eight hundred dollars per month tax free. For having tried to become self-supporting, he is penalized by losing his insurance.

Under the law currently in effect, a person who becomes blind may go back to work, lose his job, and thereby become ineligible ever to receive disability insurance payments again because he has demonstrated by going back to work that his blindness does not prevent him from engaging in gainful activity. On the other hand, if he is willing to draw disability insurance and make no attempt to go back to work, his payments will continue and his financial future is assured. Under present law, the individual is encouraged to remain idle and not jeopardize his monthly check.

If the disability insurance bill which I have introduced passes, every blind person will have the incentive to venture and earn to his full capacity. His monthly insurance payments will not be jeopardized. Both the blind person and society will be better off for him to be productive rather than idle.

With proper training and opportunity the average blind person can handle the average job as well as his neighbor with sight. The problem of blindness is not only the loss of eyesight. The misunderstandings and misconceptions which exist are probably equally damaging.

The new law would reward the efforts of blind Americans to achieve independence and self-sufficiency through employment and reverse the negative incentives incorporated in the current law.

One of the concerns of those supporting this legislation is the cost factor which has been estimated to be \$400 million in additional benefit payments per year. However, data is not available as to the sizeable increase in revenues to both the general income tax pool and the Social Security disability insurance program as well. Also there would be a certain decrease in the number of Supplemental Security Income recipients.

The present system is so structured that a blind person works and helps pay his own way, or does not work and others pay it for him. The legislation I have proposed recognizes this fact and provides for maximum utilization of the talents, abilities and potentials of blind Americans to earn their daily bread.

The Congress has always recognized that our blind citizens face a unique kind of economic and social discrimination. There is an awareness of the fact that the real problems of blindness stem not so much from any physical lack of ability, but rather from a general lack of opportunity and the means of achieving first class status.

Mr. Chairman, the Subcommittee on Social Security, by initiating hearings on a broad range of social security issues, including the disability insurance program, is performing a vital service for the nation's blind by focusing attention on those provisions of law which presently operate to impede their progress toward bettering themselves. A substantial number of members of the House of Representatives supports this positive step forward for blind citizens. I strongly urge the Committee to favorably recommend to the House disability insurance for the blind which will bring into being a new era of opportunities in the lives of the blind of this nation. Thank you.

STATEMENT OF HON. FERNAND J. ST GERMAIN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF RHODE ISLAND

It has been a long standing tradition in America to aid the underprivileged, needy, disabled and handicapped. Intrinsic to the belief that motivates our society to come to the aid of the less fortunate is the idea that this aid should act to encourage those persons to realize the full limits of their potential.

Presently, however, the policy which applies to the hundreds of thousands of blind persons is doing just the opposite. It is not only failing to promote fulfillment, but is actually thwarting the blind in their efforts to become active members of society.

The support program that is currently serving the blind is structured in such a way that negative rather than positive incentives are offered. Rather than supporting the blind in their attempts to become productive we are encouraging them to sit back and do nothing.

Under the current Social Security Act, the blind are restricted from earning more than \$200 per month. If they earn even a dollar more than that in a month's time, they lose their social security benefits, which is to say, they forfeit their major source of income. Compounding this already difficult situation is the fact that if the blind person is able to gain employment, even at the

poverty level, he demonstrates his employability and stands a chance of losing his social security altogether. This risk is weighed by every blind person, at present, when they contemplate improving their situation.

On June 22, I introduced an amendment to the Social Security Act which would remove the negative incentives which are now confronting the blind.

H.R. 7574 would liberalize the conditions governing the eligibility of blind persons to receive disability insurance benefits. The legislation would insure that no secure income would be lost if the blind person attempted to become a productive member of the labor market.

Removal of these negative incentives would benefit the blind in this country greatly. In addition, it would benefit all taxpayers.

The working blind person need not receive assistance. On the contrary, he is paying into the public treasury rather than drawing from it.

If, for any reason, the blind person were to lose his source of income, he would be secure in the knowledge that disability insurance benefits would be available until he was able to secure another income.

To be blind in a world that is designed for the sighted is an enormous obstacle to have to overcome. To confound their attempts at becoming productive and vital members of society is outrageous and in dire need of change.

The blind in this country aren't asking to be supported forever. They would, however, like to be active and working members of the community. Through H.R. 7574, they would be free to pursue self-sufficiency without the threat that their efforts might mean the loss of the aid they might, someday, look to for support.

STATEMENT OF HON. JOHN SLACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. Chairman, I appreciate the opportunity to come before the subcommittee in support of H.R. 3375, a bill which I have introduced. The purpose of this bill is to amend Title II of the Social Security Act in an effort to improve conditions governing the eligibility of blind persons to receive disability insurance benefits. To date, several bills have been introduced on this subject.

Legislation to amend the Social Security Act to improve the disability program for the blind has over the years received substantial support, having passed the Senate six times since first being introduced during the 88th Congress by Senator Hubert Humphrey. In addition, many Members of the House have supported this legislation on behalf of the blind. Such persistence in this effort is evidence that there is a need for revision of this law.

Generally speaking, my bill would if enacted, allow a blind person who has worked 1½ years in Social Security covered work to qualify for disability benefits for as long as the blindness lasts regardless of his earnings.

In contrast, under present law, a blind person who wants to work can continue receiving disability benefit checks, knowing that a small amount of earned income, as little as \$200.00 per month, may force cancellation of entitlement to regular benefit checks. If he actively seeks a job to improve his financial condition, he is demonstrating employability and therefore, in the eyes of the law no need for continued financial assistance.

Obviously this constitutes a negative incentive where idleness for the purpose of maintaining economic security is encouraged. This type of situation, coupled with the possibility that blind persons will likely be underemployed if they do work, often creates severe financial disadvantages for the blind.

Mr. Chairman, I think it can be said that blind people as a group want to work and want to pay taxes. This legislation will encourage them to seek employment without fear of losing financial security, and I think the time has come for us to aid them in achieving this end.

I received a letter the other day from a man who stated in the letter, "no single piece of legislation is as important to the blind as the bill which you have introduced." I urge the subcommittee to take a hard look at this bill and judge it on the basis of what it will mean to a great many people who have labored long and hard for years trying to escape their dependency status.

Thank you very much.

STATEMENT OF HON. HARLEY O. STAGGERS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WEST VIRGINIA

Mr. Chairman, I am pleased to have this opportunity to testify in support of much-needed improvements to the disability insurance program for the blind. The State of West Virginia has long been linked to programs of substantial benefit to the blind of this Nation. The vending stand program introduced and fostered over the years by Senator Randolph has brought the commercial and managerial abilities of the blind to the attention of the public in a way which undoubtedly has done much to eradicate the age-old stereotype of blindness as a final and unsurmountable blow to independence or productivity. It is in this tradition of helping the blind to achieve independence and equal status that I have introduced H. R. 3960, which is identical to your own bill, Mr. Chairman, H. R. 3049.

The blind are burdened by their handicap, Mr. Chairman, but they are burdened even more by their history—a history which makes it difficult for them to be judged fairly on their abilities and given a chance to compete in the labor market. The vending stand program authorized by the Randolph-Sheppard Act is evidence that Congress has long recognized that the blind face special and difficult problems which justify their being treated differently from other disadvantaged groups. So onerous is the economic handicap they face that it is considered proper for us to make a special case of them.

This has nothing to do with any especially severe limitation brought on by lack of sight, but it is simply a recognition of the facts of life for the blind. Quite simply, they are the most severely discriminated-against class of our society—most severely in terms of the high rate of their unemployment and the menial level and insecurity of the jobs they obtain, but also most severely in terms of the irrational prejudice of the discrimination they suffer. Even when a blind person has shown he can do a job and can produce results, his skills are not sought after. There are blind persons in my State, and not only in my State, who are in their fifties and sixties and whose only work experience during their entire lives was during the labor shortage brought on by the Second World War.

It took a worldwide crisis to open opportunity to these workers, and they showed then that they could compete with the best of us, sighted or blind. But peace for the Nation brought unemployment to the blind—in most cases, permanent unemployment and idleness. Since then there has been no major labor shortage to force these workers on our attention. And unless we wish to depend on universal catastrophes to integrate the blind into working society, we will have to employ more positive measures on our own.

It is just such measures that will be brought about by the acceptance of the bills I am supporting today. The present disability program has features which actively deter the blind from entering the work force. These features—the earnings limitation and the complicated eligibility requirements—have intelligent purposes in the structure of the entire disability program, but they are entirely negative and undesirable in their effect on the blind.

The earnings limitation makes it dangerous for the blind to seek work at all once they achieve eligibility. The experience of their war-time employment is evidence that well-paying jobs are too often freak situations, and ones likely to vanish as quickly as they appear. Yet such a short-term job may permanently disqualify the blind worker for disability benefits.

Beyond this, the complexity and variability of eligibility requirements works very unfairly against those who become blind later in life. This is precisely the time when jobs are hard to get even for the nonhandicapped. And believe me that the loss of sight means looking for a new job, even if the old one—looked at objectively—did not require sight. This is also the time of life when adjustment to blindness is hardest. It is a time when most people are looking forward to the fruits of a lifetime of steady work and the piling up of seniority. It is the most difficult time to gather the initiative to not only start a new career, but to start one with the added heavy burden of a most maligned and misunderstood handicap.

The disability insurance program ought to equalize some of the negative effects of sudden disability; after all, what else is its purpose? It ought not, as at present, add to those negative effects. It ought not suppress the initiative to venture out in search of meaningful work by making that search jeopardize benefits. And it ought not discriminate against those blind persons whose barriers to successful employment because of age are already the hardest.

The bill I have introduced, Mr. Chairman, will correct these problems with regard to the blind. It will correct them with a negligible cost to society financially, but with a most notable dividend to society in every other way. This is something which ought to be done.

STATEMENT OF HON. NEWTON I. STEERS, JR., A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MARYLAND

I want to state my support of HR 3049, a bill which would create greater incentives for the blind to seek gainful employment. Through my affiliation with agencies for the blind, I have become familiar with the economic problems faced by blind people and would welcome passage of this bill which so directly addresses the problems.

The economic problems of blind people do not result from any lack of ability on their part. The problems result from the widespread biases and misconceptions about the blind which are held by many sighted members of society, including many employers.

A fresh approach to this problem is long overdue. One of the barriers which the blind face, Mr. Chairman, is precisely the earnings limitation in Title II of the Social Security Act, the disability program designed to benefit them. The files of agencies are replete with examples of individuals who are unwilling to try for the possibilities of increased earnings when set against the surety of a welfare-type check conditioned on need—and, therefore, conditioned on not working.

The fresh idea we need, Mr. Chairman, is the original conception of Social Security as an insurance against the economic effects of a disability: an insurance, therefore, conditioned solely on the person's being blind and having paid into the system. We should eliminate the social welfare thinking with respect to the blind—with its earnings limitation—and should make the program a real social insurance against blindness: for those with sight the assurance that blindness will never mean economic destitution and for the blind the assurance that they can never fall below a basic floor of economic security. Such security will work as an incentive to seek employment rather than discouraging work as the present earnings limitation does.

Moreover, the new employees will become contributors to our tax base through revenue and Social Security taxes on their new salaries and can cease being either psychological or economic burdens on society.

It is as right for us to support this legislation as it is to support free education for the blind. I urge the Subcommittee to take favorable action on this important piece of legislation.

STATEMENT OF HON. CHARLES THONE, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEBRASKA

Full employment is ideally a goal towards which we all work. To achieve this goal, we must encourage those disabled individuals among us to also seek employment. In this case my concern rests with removing negative incentives which discourage many of our blind citizens from seeking employment.

H.R. 4052, which I introduced on February 24th, would establish eligibility for disability insurance benefits to blind persons who have worked a year and a half in employment covered by Social Security. The eligibility will continue regardless of the earned income of the blind person. Thus, negative incentives currently discouraging to our blind citizens will be removed and they will find themselves more secure and perhaps even more steadfast in their attempts to make themselves more productive. Additionally, they will be paying into Social Security rather than just drawing benefits and they will become taxpayers, not additional tax burdens.

It is difficult for those of us who have not experienced it, to imagine the problems and frustrations faced by a blind individual in our sighted society. We must encourage our employable blind population to join the working world. We all have much to gain by such action.

Therefore, I urge the Subcommittee to favorably report H.R. 4052 to the Full Committee and encourage immediate Floor action in this regard.

STATEMENT OF THE AFFILIATED LEADERSHIP LEAGUE OF AND FOR THE BLIND
OF AMERICA

SUMMARY

The Affiliated Leadership League of and for the Blind of America is a coalition of 48 nonprofit organizations located throughout the United States. This coalition:

1. Favors the enactment of H.R. 3049, by Congressman Burke, which would provide disability insurance benefits for blind persons with at least six quarters of coverage.
2. Opposes deletion of the word "substantial" from the definition of disability, as proposed in Section 3(a) of H.R. 8076 by Congressman Burke.
3. Favors making the provisions of Section 223(d) (1) (B) of the Social Security Act applicable to all blind beneficiaries regardless of age.
4. Favors defining "substantial gainful activity" in terms of amounts earned rather than through criteria fixed by the Secretary.
5. Favors establishing an earnings standard for determining substantial gainful activity which would be sufficiently high to encourage disabled workers to return to work.
6. Favors a requirement that findings of fact in claim determinations be based on a preponderance of the evidence rather than on "substantial" evidence.
7. Favors payment by the Federal Government for medical evidence, for travel incident to medical examinations, and for travel to attend reconsideration reviews and proceedings before administrative law judges.
8. Opposes penalizing beneficiaries for engaging in substantial gainful activity during the last 12 months of a 24-month trial work period, as proposed by Section 7(a) of H.R. 8076.

STATEMENT

1. Disability coverage of the blind

The Affiliated Leadership League supports H.R. 3049, by Congressman Burke, and similar bills which would make disability benefits payable to blind persons who have six quarters of coverage earned at any time and would change the definition of disability for the blind to permit them to qualify regardless of earning. This would afford many blind persons a genuine opportunity for security and a decent standard of living. Enactment of this provision would remove a substantial percentage of blind recipients from the SSI rolls and would lower administrative costs for both the SSI and DI programs.

This concept is supported by all of the major organizations of and for the blind. Congress has permitted veterans whose sight loss was service-connected to qualify for veterans pensions regardless of earnings. Surveys have shown that blinded veterans have established good records of gainful employment because their pensions are not reduced or lost as a result of that employment. This incentive to work and be self-supporting should be provided to blind Social Security beneficiaries also.

2. Proposed deletion of "Substantial" from definition of disability

Whereas H.R. 3049 is very progressive in the matter of earned income, H.R. 8076 (by the same author) is very regressive in that, except for those aged 50 and over, it would create an almost absolute disincentive to work. Section 3 of H.R. 8076, by deleting "substantial" from the definition of disability for beneficiaries under 50, would subject them to a 100 percent offset in benefits for each dollar earned. This reactionary provision would not stimulate beneficiaries to become gainfully employed. The consequence would be, rather, a reduction in beneficiaries' living standards, because it would be futile for them to accept whatever part time or casual employment they could obtain. Most of those disqualified by this provision would have to apply for Supplemental Security Income. The indirect effect, therefore, would be to subsidize the Disability Insurance Trust Fund with general revenue funds.

3. Eliminating age requirement from definition of disability for the blind

The reduction from 55 to 50 in the age qualification of the special disability definition for blind individuals, as proposed in H.R. 8076, Section 3(a), would

be a moderately progressive change. This special definition, however, should be extended to all blind beneficiaries for the reasons which prompted the inclusion of such a provision in the law. Making this standard applicable regardless of age would avoid the regressive earnings provision of Section 223(d)(1)(A) as proposed in H.R. 8076.

4. *Objective definition of "Substantial Gainful Activity"*

We firmly oppose those provisions of Section 6(a) of H.R. 8076 which would require the Secretary to prescribe criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. Instead, we favor prescribing by statute specific monetary amounts which a beneficiary may earn without loss of benefits. Such amounts should, of course, be increased periodically and automatically in proportion to increases in wages in covered employment and/or living costs. The adoption of objective standards of this type would simplify administration of the law and cut costs accordingly.

5. *Earnings standards for substantial gainful activity*

One of the principal disincentives to rehabilitation and work activity, as pointed out by the General Accounting Office (noted on page 25 of the staff paper of May 17, 1976), is the low earnings standard in current regulations. The proposal in Section 6(a) of H.R. 8076 to establish an average earnings base of \$250 a month would have minimal effect on this situation. The proposed standard, it should be noted, would be less than the current poverty standard for a two person urban family and substantially under the poverty standards for families of three or more. It also is less than the prevailing minimum wage. The earnings limitation should be set high enough that an individual would have an incentive to return to work. Furthermore, it should not be lower than the current poverty standard applicable to a particular disabled beneficiary and his family. Provisions for graduating the loss of benefits, as in Supplemental Security Income, would be desirable in any formula adopted for this purpose. It should be kept in mind that a standard which does not provide a substantial incentive for working will, in the long run, be costly to the Disability Insurance Trust Fund.

6. *"Preponderance of" instead of "substantial" evidence*

The "substantial" evidence rule contained in Section 205(g) of the Social Security Act permits the Secretary to effectively base a conclusion on limited evidence even though the preponderance of evidence may be the contrary. For example, one negative medical opinion is *substantial* evidence, even if offset by six affirmative medical opinions as to the disability of a claimant. We recommend that the phrase "a preponderance of the" be substituted for the word "substantial" in this section.

7. *Payment of medical evidence and travel costs*

We favor enactment of Sections 11 and 12 of H.R. 8076, which authorize the Federal Government to pay the costs of obtaining medical evidence, travel incident to medical examinations, and travel to reconsideration reviews and to proceedings before administrative law judges in connection with disability claims and similar claims for benefits under the Social Security Act. These provisions would assist claimants who otherwise might find it difficult or impossible to prosecute claims because of their inability to finance the cost of preparing their cases.

8. *Trial work period*

We believe that extending the trial work period to 24 hours would make it possible for many beneficiaries to become self-supporting. The provision in Section 7(a) of H.R. 8076 eliminating benefits for such an individual for any month after the twelfth month of his trial work period in which he engages in substantial gainful activity would negate the purpose of the longer trial work period, however. It would penalize the beneficiary for progress made toward self-support and would, in effect, make the extension of the trial work period useless.

NATIONAL FEDERATION OF THE
BLIND OF YAKIMA COUNTY, WASH.,
Yakima, Wash., May 12, 1977.

Congressman BURKE,
U.S. House of Representatives
Washington, D.C.

DEAR CONGRESSMAN BURKE: Hearings on the Social Security Bill open May 16, 1977. We Blind of the "National Federation of the Blind of Yakima County, Washington urge your committee to add the Disability for the Blind Insurance rider text to this bill.

Blind people can't live on S.S.I. and be limited to the financial maximum allowed to send children to school, cost of living, and our self limited employment when we are allowed to make only limited additional income.

Sighted readers, transportation, and medicine are especially a burden.

PAULAJEANNE BRADFORD,
Treasurer/Secretary.

Mr. JACOBS. The next witness is Howard I. Grossman, an administrative law judge from Decatur, Ga.

Judge Grossman, I presume having seen you in the chambers that you do know the rules of our committee. You can have a formal statement submitted for the record, or you may read it, or you may speak extemporaneously, and the time allotted to you is 10 minutes.

**STATEMENT OF HOWARD I. GROSSMAN, ADMINISTRATIVE LAW
JUDGE, DECATUR, GA.**

Mr. GROSSMAN. Mr. Chairman, and members of the subcommittee. Thank you. I was going to claim the 4 minutes assigned to me legally by Dr. Baker, but, of course, I would have to defer to your judgment.

Mr. JACOBS. I must tell you that that rule is not a negotiable instrument.

Mr. GROSSMAN. Thank you.

Mr. Chairman, Mr. Gephardt, as indicated, my name is Howard I. Grossman. I am an administrative law judge assigned to the Social Security Administration. I live in Decatur, Ga., in the Fourth Congressional District. It is a great honor to be allowed to speak to you even under your rigid rules, and I thank you for the privilege.

I would like to summarize my written statement and make some additional comments. I apologize for the length of my statement and attribute this to my inexperience as a witness before congressional committees.

I speak generally in support of H.R. 5064, introduced by my Congressman, Hon. Elliott Levitas. I will also discuss another bill dealing with the same subject, H.R. 8076, introduced by Chairman Burke. In this connection, allow me to express to the subcommittee my deepest regrets over the chairman's medical problems and my hope for his early recovery.

In this summary I would like to deal with a few statistics first, as this will put all questions into better perspective. According to an operational analysis of the Social Security Administration's Bureau of Hearings and Appeals, a little over 7 million claims in all programs were received in fiscal 1976. 1,849,000 in the disability field alone. There is an omission of a line in the fourth paragraph on page 16 of my written statement, leaving out the reference to the number of disability applications, and I would like my remarks here to constitute clarification of that paragraph.

The relevant statistic is the fact that about 95 percent of all allowances are paid by the State agencies, in either initial or reconsidered determinations, and about 5 percent by the ALJ's, the appeals council, and all the Federal courts put together. The State agencies granted over a half million entitlements to disability insurance benefits in 1973. Each entitlement had an actuarial value of more than \$50,000 at that time, and is worth about \$100,000 today, according to a current memo from an appeals council member. There were some earlier figures today of \$60,000 to \$65,000 but the current memo puts it at \$100,000. I don't know the source of that opinion.

It is obvious that the disability trust fund must save money as well as raise money. In order to do this we must go to where the money is being spent, at the State agencies.

My written statement shows the annual loss of billions of dollars due to inefficiency at the State level and sample review at the Federal level.

H.R. 5064 stops this enormous drain by requiring the Secretary to reinstate full Federal review of every State agency allowance. In order to save costs, full Federal review of State agency denials is not mandated, since an erroneous State agency denial can be corrected during the appeals process. There is a similar provision in H.R. 8076, but it appears to require Federal review of both State agency allowances and denials. The provision in Congressman Levitas' bill is superior, since it avoids the unnecessary cost of Federal review of denials, where the claimant already has a right to appeal.

After the billions in allowances to persons who are not disabled, the next great problem is the mystery with which the administration surrounds its denials. Two years ago, I worked for passage of H.R. 8018, introduced by Congressman Sisk, which would have ended the mystery by giving the claimant a face-to-face conference at the reconsideration level. I am happy to see that this year there are at least three bills before the subcommittee incorporating similar provisions, and hope that it will finally pass.

Application of a difficult concept such as "disability" requires careful data-gathering in order to be valid. The administration, however, was dilatory in getting the facts under the old appeal process. What really happened is that different facts were presented to different people at different levels and times, applying different criteria. Under the newly shortened appeal period, the claimant has 60 days in which to request a hearing, which is significantly shorter than the prior 6-months period. Actually, there was a double 6-months period caused by the mandatory nature of reconsideration. As a result, many cases were reaching hearing well over a year after the claimant had filed his application.

Now, it was this extended appeal period, which Congress has eliminated, that provided the rationale for the administration's "floating application" theory. You might as well consider new facts at every level, the argument went, since the claimant will probably have new and more severe impairments 18 months later when he reaches hearing. The administration used this device to avoid taking a stand at any point, and thus maintained continuous administrative control.

This rationale disappears with the 60-day appeal period. As the Comptroller General points out at page 28 of his 1976 report. "There

was a greater chance of (the claimant's) condition deteriorating" under the longer appeal period. Under the 60-day period, if the claimant fails in his application, he can immediately file a new claim and allege new facts.

Accordingly, H.R. 8064 requires the State agency to investigate all the facts and take a stand. H.R. 8076, on the other hand, is ambiguous on this point. We never really know at what point the Secretary begins his investigation of a case. H.R. 8076 rewrites section 205(b) of the Social Security Act so as to delete any reference to investigations during the initial stages. For all we can glean from the opening subsection of section 205(b), the Secretary makes an initial decision without investigating anything.

H.R. 8076 contains a very elaborate provision for face-to-face conferences. The trouble is that the Secretary's duties are still ambiguous on the issue of investigation. He is to reconsider the initial decision "taking into account all new evidence submitted by the claimant at the informal conference or otherwise." The proposed statutory language suggests, although it does not clearly require, a consultative medical examination ordered by the Secretary.

In any event, the Secretary issues a "statement of the case" containing a discussion of pertinent law, a list and summary of the evidence, and the Secretary's decision and "the reason or reasons upon which it is based." The claimant has 60 days in which to request a hearing.

The next subsection of 205(b) under 8076, No. 6, is difficult to understand. The Secretary has already made an initial decision that the claimant is not disabled. The claimant requested and obtained a conference, and submitted new evidence. The Secretary considered that evidence, perhaps ordered a medical examination, and then issued his reconsidered decision, in writing, with stated reasons. Under subsection (6) the claimant may request a hearing. At that point, H.R. 8076 authorizes the Secretary to investigate the case. Not when the first application is filed. Not when a request for reconsideration is made. Not when the claimant submits new evidence at a face-to-face conference. Not until he files a request for hearing.

Who is going to conduct these investigations? Certainly not the Secretary himself. Is there anyone left to do it? When the Secretary passed the reconsideration point, he left behind him the army of about 10,000 State agency and BDI personnel whom I described in my 1975 statement to this subcommittee. No one remains for investigation except a few hundred administrative law judges.

H.R. 8076 states that the hearings shall be subject to sections 554 through 557 of title 5 of the U.S. Code. This is impossible under the bill, because section 554(d) of the code prohibits any combination of adjudication and investigation.

Mr. Chairman, the only reason for the existence of ALJ's is the right of every citizen to a fair hearing independent of control by the agency that denied his claim. The entire system can be destroyed by so overloading it with cases and investigations that there is no time for real adjudication. This will be the inevitable result if this statutory language is enacted.

Who is to conduct these hearings? There is no reference to administrative law judges anywhere in H.R. 8076. In a later section setting up an unnecessary disability court, there is reference to "hearing

examiners," the old title which was changed several years ago by the Civil Service Commission. Why is the old term used?

In the section dealing with hearings, the only APA language is that the hearings shall be subject to sections 554 through 557 of title 5, United States Code, a part of the codification of the APA. However, there is no provision that such hearing shall be conducted before an ALJ appointed under section 3105 of title 5, as is required in H.R. 5064.

The point to these seeming technicalities is as follows:

For several years, an argument has been going around that you can have an APA hearing without an APA judge; that is, a fair hearing conducted by an unfair judge. I think this is ridiculous. I do not wish to discuss constitutional law about fair hearings with the subcommittee, as there is no time. I only wish to point out that, if Congress wishes to reverse several decades of history, and put the American people and their social security rights completely under the domination of an executive agency, with no real adjudication of disputed facts, then let Congress do so openly, and not by equivocal statutory language.

If Congress wishes to provide big corporations subject to the regulatory agencies with the protection of a truly independent judge, but allows to disabled and elderly citizens only the gesture of a hearing officer submissive to the agency, then let this be a choice openly made.

Consider, members of the subcommittee, what your response will be back in your home district, when you arrive at your office door one morning and are met by a gaunt constituent ravished by terminal cancer, with the shadows descending upon him as he tells you that Social Security denied his disability application. Consider your response.

You will get such persons. I get them now, and you get some of them.

But if I go, and the ALJ's go, you will get all of them, and you will have no response.

H.R. 5064, in unambiguous fashion, requires case investigation by those equipped to do so, and sends the difficult cases to a true judicial proceeding, with the claimant and the trust fund represented by counsel. The means by which this is accomplished is set forth in detail in my written statement, as well as the necessity for it.

Congressman Waggoner asked me this week whether I felt that the ALJ's need guidelines. I certainly do. Everyone in the process needs guidelines, including the State agencies who decide 95 percent of the cases. H.R. 5064 provides such guidelines. First, there is a more realistic definition of disability. Although the same factors of impairment, age, education, and working history are continued, there is a realistic provision that disability may be predicted to end in many cases. There is a provision for regulations on the nonmedical criteria, creating presumptions. The listings are continued.

And, finally, the quality of evidence required to establish disability is tightened up. If an ALJ wants to allow a case despite only minimal objective evidence of an impairment, he is required to specify his reasons, and can be reversed if he fails to do so; which brings me to the definition of disability.

H.R. 8076 eliminates the educational and working history factors; it also reduces impairments to meeting the "listings," and ignores the fact that chronological age may differ widely from biological age. In sum, a person age 50 or over need only have an impairment which prevents him from engaging in gainful activity requiring skills which he has customarily used in the past, while an individual under 50 must meet the listings.

This definition assumes a degree of validity to medical evidence which is not warranted by the records of the subcommittee. Thus, when your staff asked hard questions on this subject back in 1974, the administration said that new medical review techniques showed even greater differences in judgment in assessing the level of impairment severity. There was little difference of opinion in allowed cases which met the listings, but significant differences in less severe cases alleged to equal the listings. The administration told this subcommittee:

We have not been able to develop specific adjudicative criteria for distinguishing levels of impairment severity below the level of "meets" the listings, and the assessment is therefore very largely a matter of the judgment of the physicians based upon the facts of each individual case. (July 1974 report, pp. 351-352.)

The translation of this is that if a person has a cardiovascular and a respiratory impairment so severe that he is almost dead, there is little disagreement among the doctors that he "meets the listings." In lesser impairments, however, there are significant differences among the doctors. They can decide the easy cases, but have trouble with the difficult ones. Then why pick doctors instead of judges to decide disability, as H.R. 8076 practically does?

Let me close, Mr. Chairman, with examples of two cases under H.R. 5064 and H.R. 8076.

Jimmy Jones was born on January 1, 1928. He did not learn to talk until he was 4 or 5, and went to school for a few years, but never learned to read or write. Somewhere along the line he was given an IQ test, and scored 75, showing that he is retarded. He settled into a working life of manual labor, working on construction jobs, digging ditches, et cetera. He is law abiding and of good moral character. He is married, and has three children whom he is working hard to support. His only vice is cigarette smoking. He began to get a little short of breath in 1974, but continued working. He was found to have mild emphysema. Persistent but mild hypertension began, with the diastolic rates not regularly at 100 or more. Jimmy developed a peptic ulcer, but abdominal surgery was successful, leaving him with only a dumping syndrome. As a result of these impairments, Jimmy became too weak to swing a pick axe all day, or haul brick and mortar.

The boss tried to find other work for him. However, he did not qualify for any lighter job, because of his illiteracy, retarded mental status, and limited working skills. With regret, the boss let Jimmy go. He applied for disability benefits, was denied twice, and comes before me in January 1977.

Under H.R. 5064, I find Jimmy to be disabled within the meaning of section 223(d) (1) (a) (i) (I) of the Social Security Act, as amended. He has both physical and mental impairments. His hypertension is probably controllable, and could not reasonably be found to be of long and indefinite duration. However, his emphysema is not usually re-

versible, the half of his stomach which was removed cannot be returned, and his mental status is congenital. He will not improve medically to a degree sufficient to send him back to the heavy labor he has done all his life, and it is hopeless to try to teach him a more sedentary trade.

Under H.R. 8076, however, I affirm the State agency denial of benefits to Jimmy. He has not attained age 50, and his impairments do not meet the listings.

Now let us consider Gerard Q. Silverspoon, who was born on January 1, 1927, exactly 1 year earlier than Jimmy Jones. Gerard graduated high school at age 15 at the top of his class, whizzed through business college, and climbed up the corporate ladder with great rapidity. By 1977, in his 50th year of life, Gerard was a bona fide Wall Street tycoon in charge of an international conglomerate. Gerard's work—the only kind he had engaged in with some regularity over a substantial period of time, required enormous financial wizardry, the ability to analyze character instantly, willingness to take risks, a large element of ruthlessness, and the energy to work around the clock when the opportunity to steal another company arrived.

Gerard suffered a mild to moderate heart attack last February, having had a vascular condition for some time. He was in the intensive care unit for a few days, and was finally returned to his 14-room mansion with medical advice to avoid stress of any kind, tend his garden, and learn to be a good type B personality, in cardiac terms.

The vice president of the conglomerate, who hates Gerard, takes over his office, and sweetly offers Gerard a quiet, nonstressful job as office manager at \$35,000 per year. Gerald snarls his answer, files an application for disability insurance benefits, and comes before me after being twice denied.

Under H.R. 5064, I affirm the State agency's denial, since Gerard is capable of engaging in substantial gainful activity, albeit not quite as substantial as that of a Wall Street tycoon.

However, under H.R. 8076, I am compelled to reverse the State agency and grant Gerard his benefits, since he has attained age 50, and is suffering from a physical impairment which prevents him from engaging in gainful activity requiring skills comparable to those of a Wall Street tycoon.

Silverspoon draws his disability benefits, and uses them to paint his yacht every month. Jimmy Jones, his sick wife and children, do the best they can on welfare, because he is not disabled under H.R. 8076.

This is what results from the absurdity of saying that attaining age 50 is as bad as being blind, which is what 8076 says. How many in this room are 50 or older? How many would trade their eyesight to go back to age 49?

[At this point, Mr. Jacobs raises his hand.]

MR. GROSSMAN. I don't think you have reached the age of 50 yet, Mr. Chairman.

I believe the subcommittee should reject the new definition of disability in H.R. 8076. It places excessive reliance on the validity of medical evidence, and overemphasizes the effect of age. It is indeed strange for this subcommittee to hear arguments, as it has this week, about the arbitrariness of Chancellor Bismarck's retirement age of 65, and then be presented with a bill which makes age 50 determinative in disabili-

ity determinations. I have every sympathy with the elderly, and give age great weight in making my determinations. A rigid test such as that in H.R. 8076, however, prevents consideration of individual differences, which are crucial. It discriminates against the handicapped such as Jimmy Jones, in favor of the brilliant and successful, such as Gerard Q. Silverspoon.

The Social Security Administration deals with mass data, and rightfully looks for some uniformity in that data. But, ladies and gentlemen of the subcommittee, I deal with individual human beings, and know that they are not robots, are built differently, and stand up differently to pain and stress. Although I may issue different decisions in cases with rather similar impairments, the decisions are not really inconsistent, because of these individual differences.

I urge the subcommittee to continue with the tested factors for establishing disability, as refined in H.R. 5064, and to reject the definition in H.R. 8076. Don't vote for Gerard Silverspoon, Mr. Chairman—vote for Jimmy.

I thank you.

[The prepared statement follows:]

STATEMENT OF HOWARD I. GROSSMAN, ADMINISTRATIVE LAW JUDGE, DECATUR, GA.

Thank you for this opportunity to appear before the subcommittee. My name is Howard I. Grossman. I am an Administrative Law Judge assigned to the Social Security Administration. In 1975, I submitted a statement to the subcommittee during the hearings on Social Security problems, and the statement is contained in the record of those proceedings. I speak to you today in support of the proposed statutory reforms contained in H.R. 5064. I will not discuss all of the proposed reforms, but will concentrate on those I consider to be of major significance.

The disability program alone presents an encyclopedia of problems, and reasonable persons may differ as to the priorities. At the center of all the problems, however, is the very concept of disability and its current statutory definition. As I view the matter, the definition is erroneous, and is the principal reason for our troubles in this field. Until such time as Congress corrects this basic error, all other measures can be only palliative at best.

A NEW DEFINITION OF DISABILITY

Simply stated, the Act defines disability as inability to work because of a medical impairment lasting at least 12 months, or likely to result in death. The basic error is the statute's failure to incorporate in this definition the circumstances under which disability ceases. Although there is a statutory section on cessation, it is not related to the initial finding of disability, and requires a separate finding of cessation only after the beneficiary has come to think of his payments as a life-long grant which must be protected. The law thus provides for built-in resistance to any return to gainful activity, and spawns litigation on the procedures necessary for a finding of cessation—litigation which has already reached the Supreme Court.

A moment's reflection and ordinary common sense will persuade the subcommittee that some disabilities end because of medical improvement. The patient simply gets better. Further, most medical impairments have a predictable course. Our medical technology is so advanced today that competent doctors can predict the probable date of recovery from a routine ailment. At least, they can say with some degree of certainty whether recovery will take more or less than 12 months. In similar manner, an impairment which is permanent or terminal in nature may be the subject of a reliable prognosis.

It is true, of course, that events of the future may contradict the predictions in some cases. The law can provide for these variations from the norm. What the law should be concerned with is the great preponderance of the cases where the prognosis is valid.

Disability, however, is not the impairment itself—it is the inability to work because of an impairment. In some cases, the acute stage of an impairment stabilizes

at a level less than full recovery, and the individual is left with a residual restriction in his ability to function. He remains with some abilities however, which by training may be developed into the capacity to do useful work.

For example, take the case of a warehouse worker involved on an accident, with multiple broken bones as the result. Because of the severity of his impairment, it will take more than 12 months for him to recover, and he is unlikely to achieve more than eighty percent return to normal. He will be restricted in ambulation and some other physical activities. It is clear that he will not be able to return to the physical requirements of handling freight shipments. However, he is only 32 years of age, and is a high school graduate with above-average intelligence. He can be trained to do light or sedentary work, such as office work, handling shipping documents, to name only one job. A decision must be made whether to invest in the training necessary to give him these skills.

Other individuals may not be so fortunate. One may have irreversible brain damage, another terminal cancer. These impairments are not going to get better, and any investment in training these individuals would be unrealistic. These unfortunate persons are the "hard core" disabled.

A person need not have brain damage or terminal cancer to fall into this category. Take the case of the man with the multiple broken bones. Suppose that he is 57 years of age, never went past first grade, is illiterate, has an IQ of 80, and has spent his working years in manual labor. An individual like this, with significant orthopedic impairments, cannot be retrained to do other useful work.

The present statutory definition of disability fails to make these vital distinctions. It puts the man with irreversible brain damage in the same "disabled" category with the high school graduate who can be retrained. The result is inevitable. Since the law has informed the high school graduate that he *is* in the same category, he thinks of himself as such, and makes no effort to train himself for other work. Further, since he is getting disability benefits almost equal to his pre-accident salary, and would jeopardize these benefits by returning to work, he sees vocational training as a threat rather than an opportunity.

This subcommittee contracted with Mr. John Miller, a distinguished actuary, for a study of the problem. He testified before the subcommittee in May of 1976, and his full report is contained in the record of those proceedings. Mr. Miller's report constitutes a major breakthrough by the subcommittee in reaching a solution.

Mr. Miller categorizes the present law as an "over-simplistic division of all disabilities into two categories, (i) not covered, or (ii) covered, with an implied presumption of permanence or long duration." He further states that the "language of the Act, the evolution of the benefit from one originally limited to presumably permanent disabilities, and the human tendency . . . to follow the course of least resistance, all combine to create an attitude which is not conducive to the concept that most disabilities should be ended either by medical recovery or by economic recovery, i.e., rehabilitation."¹

"Under the present law," Mr. Miller continues, "DI benefits are awarded only if (i) the disability is judged to be permanent or (ii) is not permanent but is expected to last for a long time and at least twelve months in any case. In effect (i) is a life sentence to dependency and uselessness and (ii) is an indeterminate sentence with a possibility of 'parole' via recovery or rehabilitation but no definite time table or program for re-evaluation, although certain cases are diaried for future medical re-evaluation. Both beneficiaries and administrators are therefore left with the inference that a disability pension has been granted . . . The psychological impact on the disabled individual of the judgment that his disability is permanent or of long and indefinite duration certainly does not set the stage for early recovery or for a serious attempt at rehabilitation" (*id.*, pp. 127-128).

Mr. Miller provides statistical evidence that the prospect of early recovery from disability is greatly increased if the benefits are not, at the outset, promised for an indefinite period. "The individual who has a serious disability from which there may be a permanent residual, but which will not prevent his earning a living, reacts very differently when he faces a limitation on the period of benefits as compared to the individual who . . . knows that in all probability he can collect up to age 65 so long as there is not a complete elimination of his medical diagnosis and so long as he does not attempt to return to productive work" (*id.*, p. 128).

¹ Public Hearings before the Subcommittee on Social Security, 94th Cong., 2d sess., May 17, etc., p. 124.

Disability cases are thus divided into two main groups. In the first group, medical impairment is of very long duration. With some individuals, rehabilitation is feasible, and with others, it is not. In the second group are individuals with impairments which will last at least 12 months. In some of these cases, disability will end with medical improvement, while in other cases rehabilitation services will be required.

Using Mr. Miller's language, in some cases where rehabilitation services can be efficacious, "no finding or judgment of long-continued disability need be made since the program assumes that rehabilitation services will be provided immediately and will lead to a successful termination of the economic disability even though the impairment may be permanent." In unsuccessful cases, of course, reevaluation will be appropriate. "Meanwhile, a positive and hopeful judgment . . . of 'feasible for rehabilitation' will have been given rather than the negative finding of permanent or long-term disability, subject to the possibility of termination through rehabilitation, a possibility . . . brought to the disabled person's attention long after he has become accustomed and mentally conditioned to a life as a disability pensioner" (*id.*, pp. 128-129).

The present law is thus creating drones rather than workers. As with Grasham's law in economics, it drives good workers, like good coins, out of circulation.

H.R. 5064 corrects this basic error by accurate definition of the various types of disability, using essentially Mr. Miller's categories. With the exception of the "hard core" disabled, each disability finding has an ending date as well as a beginning date. In cases where the beneficiary later believes that disability will not or did not end as predicted, the filing of a new application will result in a new finding, based upon more recent evidence.

It is also possible that disability may actually end prior to the time predicted in an initial finding. As I noted earlier, the law already has a section on cessations, section 225, which requires a new finding in order to terminate benefits. H.R. 5064 continues this section, and makes it applicable to provisional findings of disability with specified ending dates, in the event the Secretary finds that disability has ceased prior to the predicted date.

An alternative definition specifies impairments so severe that they be presumed to prevent gainful work for a long and indefinite period. These impairments are spelled out in regulations, a provision which is already in the law, and applies to widows, surviving divorced wives, and widowers. Any other individual "meeting the listings" would be deemed to be disabled for a long and indefinite time.

Another provision in H. R. 5064 would authorize regulations by the Secretary concerning the effect on disability of an individual's age, education, and prior working experience considered together with the individual's residual capacity to function despite his impairments. Congress has long sought regulations spelling out the effect of these nonmedical criteria on individuals with impairments, and the Department of HEW last year suggested certain regulations which elicited considerable criticism. As envisaged by H.R. 5064 such regulations would create a rebuttable presumption of disability for any individual falling within the regulatory classifications, but a finding on the ending date of disability would also be required. There would be no presumption of nondisability for failure to fall within the classifications. This would tend toward uniformity of adjudication without creating injustice in individual cases.

It is obvious that this revised definition will result in savings to the Trust Fund. It may not be possible to project these savings with pinpoint accuracy, but even on the most conservative view they will be enormous. Some idea may be obtained from the private insurance industry. For several years the Society of Actuaries has compiled the experience of a number of leading insurance companies under individual loss-of-time policies, i.e., private "disability" policies. Thirteen companies submitted their experience, and 138,795 claims were submitted for analysis. Two groups of policies were compared, the first granting benefits primarily for two years, and the second to age 65. The comparison indicated that as many as 25 percent of the persons disabled at least one year recovered in the second year who, if insured under a long-term or unlimited benefit period, would still be asserting their claim for continuous disability benefits (*id.*, pp 138-140).

The possibility of a 25 percent reduction in total disability disbursements under the federal program has staggering implications. During 1975, benefit payments to disabled workers and dependents totalled \$8.4 billion, and the estimated expenditures for 1976 are \$9.5 billion (*id.*, p. 6). There is little question that expenditures in 1977 will exceed 10 billion, in the absence of some legislative

change. A potential annual saving of \$2.5 billion for an endangered program is something which warrants the serious attention of every member of the House.

As indicated, an essential ingredient in this potential saving is the projected termination of some disabilities through rehabilitation services. As the distinguished chairman of the subcommittee noted in his comments accompanying H.R. 15630 last year, there has been some dissatisfaction with the number of disability beneficiaries returned to productive life as a result of rehabilitation services, and a recent GAO study shows that some of the recoveries which were claimed were not really the result of such services. About 51 percent had been "diaried" for expected recovery, and another 11 percent recovered without any services. The net result was that only 38 percent of the claimed recoveries were actually the result of rehabilitation efforts. Based on these calculations, there was a net saving to the trust fund of \$1.15 for every \$1 of rehabilitation expenditures instead of the \$2.50 claimed by HEW.

The reason for the poor experience is precisely that which I have already described. When an individual is granted what he considers to be a life-long grant of benefits, the possibility that this grant will be removed by rehabilitation services is seen as a threat, not an opportunity. In this respect, the Social Security Act and the Rehabilitation Act are essentially uncoordinated, although they deal with the same problem and are administered in general by the same agencies. An individual is first told that he will get benefits because he is probably disabled for life, and is then told that he might lose these benefits if he learns new vocational skills. Small wonder that the results of rehabilitation have been disappointing! Indeed, it is surprising that any net saving is still being produced.

Under H.R. 5064, of course, the definition of disability would prevent any of the situations discovered by GAO. Rehabilitation potential, if any, would be determined at the time of a finding of disability. If disability is expected to terminate by medical improvement, this would be a part of the disability finding, and rehabilitation services would not be ordered. If rehabilitation services are indicated at the time of the disability determination, H.R. 5064 requires supporting findings as to their necessity and economic feasibility. The basis for such findings will in most cases be the participation of a rehabilitation counselor at an interview with the claimant at the reconsideration level. This is consistent with the recommendation of the Ad Hoc Committee to include VR personnel in the DDU unit.² In a few cases where appeals are filed and rehabilitation potential is an issue, there will be an evaluation of the individual in an actual work setting. These matters are being discussed in more detail in the testimony of Doctors Smits and Sink, and I will have further comments in a moment. H.R. 5064 amends the Social Security Act to provide for payment for these evaluations, and also amends the Rehabilitation Act to make them a part of the State plans.

The concept of a "term" period of disability will eliminate much litigation. Current law mandates the grant of disability benefits for an indefinite period. When it is contended by the Administration that disability has ended in a particular case, the beneficiary may resist and demand a hearing before termination, thus raising issues which have twice been before the Supreme Court, in the *Goldberg* and *Eldridge* cases. Under H. R. 5064, almost all of this problem will simply disappear. The initial allowance is limited at the outset, and there is no indefinite or continuing right, except for the "hard core" cases.

Another problem that goes away with the "term" definition of disability is that of "overpayment." Under current law, when disability is found to have ceased, such discovery invariably happens long after the alleged cessation. In the meantime, the claimant has continued to receive payments frequently running into many thousands of dollars. Much time and money are then spent in litigating whether the claimant was "without fault" in receiving the overpayment, and whether it would be contrary to the purposes of the Act or "against equity and good conscience" to waive recovery. This is unnecessary legal work, addressed to the question of who should pay for a mistake. H. R. 5064 simply eliminates the mistake in the first place, because payments automatically stop at the designated time, unless the claimant comes forward with new evidence establishing his right to continuation. There is no overpayment to litigate.

² "Final Report of the Ad Hoc Committee to Study Ways to Improve the Trust Fund and SSI Programs," quoted in "H.R. 15630, etc., Explanatory Material and Relevant Background Reports," p. 180-190.

There is more than money involved in these matters. Mr. Miller asks: "Should not primacy be put on the objective of restoring useless lives to a position of self respect and esteem of peers and family that flow from a life spent in productive and purposeful activity? . . . If the whole SSA personnel were imbued with a feeling of mission in maximizing rehabilitation accomplishments through contribution to the rehabilitation environment. If the successful rehabilitant were evaluated in terms of quality of life and human dignity, . . . the social dividend might become large and the financial savings would follow automatically" (id., p. 125).

This definition of disability continues to be an individualized one, although with more accurate parameters. Another view would define "disability" simply as an impairment of a level of severity great enough to prevent gainful activity. This is the same as the "listings" which are currently one of the alternative methods of defining disability, an alternative which is continued in H. R. 5460. An individual's age, education, degree of intelligence, and prior working skills are irrelevant under this definition.

The regulations on nonmedical criteria suggested by HEW last year do not attempt to correlate these with impairments. Rather, various levels of exertional capacity are presumed, and the vocational classifications are listed under these exertional headings. The system produces a certain number of "slots" on what has been called a "grid". Subjectivity is not eliminated, however, since the very finding of a particular level of exertional capacity in itself involves judgmental factors.

There is something to be said for uniformity in case handling, and H. R. 5064 includes authorization of a "grid" as a series of presumptions of disability (but not of nondisability). The basis for application of the nonmedical criteria is a finding of capacity to function based on all the evidence. This is something like the regulations proposed last year, except that H. R. 5064 authorizes presumptions, not rigid rules.

These two supplemental aids to disability determination in H.R. 5064—presumptive application of various nonmedical criteria to different levels of residual functional ability, and continuation of the listing of very severe impairments—will tend to cause more uniform decisions.

"Uniformity", however, connotes data in large quantities. Rules tending toward uniformity are useful in screening large numbers of cases about which there is no real dispute. Some cases, however, become very difficult. In the last analysis, the question is whether this particular individual, John Jones, is unable to work because of an impairment. For example, there may be various medical reports, not entirely consistent, of a back impairment; psychological reports which do not agree; a psychiatric examination after Jones had filed for disability benefits; one doctor who says Jones is "totally disabled", and another who says he can perform light work; testimony from Jones about excruciating and unremitting pain for which he takes only one aspirin a day; corroborating evidence from friends, neighbors, and employers; and cautious testimony from a vocational expert in response to a variety of hypothetical assumptions. These are the really difficult cases, which will not be resolved by any pat formula.

It is an undisputed fact in physiology that the pain threshold varies from one individual to another. Is Jones telling the truth about his pain? These cases frequently involve some abuses in the manner in which disability is established, i.e., in the kind of evidence considered sufficient to support a finding of disability. I deal now with this matter.

EVIDENCE OF DISABILITY

The regulations have long provided that an individual cannot establish disability by his own statements considered alone (20 CFR 404.1501(c)). The existence of an impairment can be established only by what the regulations call "medical evidence." In almost all the cases, this consists of various reports from doctors, hospitals, laboratories, etc. (20 CFR 404.1524). Of course, this is hearsay evidence, but its acceptance in Social Security cases has long been recognized since the Supreme Court's decision in the *Perales* case (*Richardson v. Perales*, 402 U. S. 389).

This method of proof works well in the great majority of cases. Hearsay is considered to be reliable because of the presumed accuracy of medical reports, and because an individual who is seeing a doctor for the purpose of curing an ailment may be expected to tell the doctor the truth.

Problems arise, however, when an individual is seeing a doctor not for the purpose of treatment, but with the object of getting disability benefits. In such cases, it is not necessarily the interest of the individual to tell the doctor his true symptoms, but, rather, to convince the doctor that he has a disabling impairment. In such circumstances, a report from a doctor, for example, that an individual is suffering pain—based entirely on the claimant's assertions to the doctor—really has no more reliability than the claimant's own statements made to the Social Security Administration. This is not to say that it is necessarily suspect, but merely that it is not entitled to any more weight than the claimant's testimony. Yet, such medical reports are routinely received in disability cases without any distinction as to the circumstances in which the report was made. In the Federal and state courts, such evidence from a doctor who is examining an individual for the purpose of giving evidence, not for the purpose of treating the claimant, is inadmissible. It has no inherent credibility, and does not qualify as an exception to the hearsay rule in the absence of special circumstances such as spontaneous cries of pain during physical manipulation of the body by an examining physician.

This problem becomes particularly acute in cases where a minor physical impairment is said to be exacerbated by a mental impairment. These are the really difficult cases, and comprise a substantial portion of those cases which go to litigation. Under current practice, the existence of the mental impairment is established by a written report from a psychiatrist. In the typical case, the claimant is seeing a "consultative" psychiatrist, that is, a psychiatrist selected by the State agency after the individual has already filed a claim for benefits. The claimant asserts to the psychiatrist that he is in "severe pain" despite a minimal impairment. In many cases the objective truth of this statement is believed by the psychiatrist, with no knowledge of the claimant's actual physical condition. The psychiatrist then makes a finding of "psycho-physiological reaction." This written report is received in evidence, and is frequently considered to be "objective" proof of a medical impairment. What has actually happened is that a doctor, out of court, has made a credibility resolution on a statement of pain, and this belief is then transformed into purported objective evidence.

H.R. 5064 tightens the evidentiary requirements by making the probative weight of a doctor's repetition of the patient's symptoms depend on the circumstances in which the latter were made. In the case of mental impairments, the psychiatrist's reports are required to distinguish between the subjective truth of the claimant's allegations and the doctor's own observations of the claimant. A finding of disabling pain based primarily on testimony, despite minimal objective evidence of disease, requires that the reasons for crediting the testimony must be stated.

The courts have long held that pain in itself may be disabling. These statutory changes will provide safeguards against subjective assertions by claimant's being mistaken for expert medical opinion.

RESPONSIBILITY FOR ALLOWANCES

Under the Federal-State mechanism, more than 95 percent of all allowances are made by the State agencies, in initial and reconsideration determinations. All the rest—less than 5 percent—are attributable to the Administrative Law Judges, the Appeals Council, and the Federal courts. The summaries provided to the subcommittee by the Department of HEW do not state this explicitly, but close analysis of the actual figures show that it is undeniable.³ It is therefore clear that we must look to the State agency actions for meaningful savings.

Section 221(c) of the Act gives the Secretary discretionary authority to reverse State agency allowances. The conference report on the 1956 cash disability program stated that it was "expected" that the Secretary would "fully utilize" this authority.⁴ Until about 1970, HEW reviewed all State agency determinations; of all cases returned to the agencies, 40 percent were changed from allowances to denials (*id.*, tables 35–40, pp. 212–217). Thereafter, the agency instituted a "sample" review system—only 5 percent of initial determinations, and 10 percent of reconsideration determinations, were actually reviewed.

³ Committee Staff Report on the Disability Insurance Program, July 1974, p. 309; the analysis is contained in "Crisis in the Disability Insurance Program," a statement by the Association of ALJs in HEW, pp. 13–16, copies supplied in 1975 to the subcommittee's staff.

⁴ *Ibid.*, Committee Staff Report, p. 7.

From 1967 to 1970, there was a slight decline in the percentage of beneficiaries compared to insured workers. However, after the Federal government stopped reviewing State agency allowances the percentage of beneficiaries jumped dramatically, from 19.3 beneficiaries per 1000 workers in 1970 to 27.3 in 1975, while benefit expenditures rose from \$3.8 billion in 1970 to over \$9½ billion in 1976.⁵ The Ways and Means staff observed that "these statistics indicate an alarming number of deficiencies in the development of allowance cases and the distinct possibility that a rather large number of individuals are coming on the rolls who may not meet the standards of the law." The staff further characterized this as "tantamount to amendment of the statutory scheme," and stated that SSA cannot reverse cases "that it does no see."⁶ HEW admitted that the State agencies were inclined to "cut corners" in allowances.⁷

And so, in 1977, we will have over \$10 billion in expenditures from a Federal trust fund disbursed with substantial errors, and with the Federal agency involved not even bothering to look at them. This is a shocking and willful waste of public funds. Any businessman who ran his business this way would soon be bankrupt, and this is why the Disability Insurance Trust Fund will soon be in the same position unless Congress takes appropriate action.

We cannot rely on the agency to correct these matters, since it has resisted any change up to now. We might look for additional financing, but this would simply be pouring money down the drain unless this negligent procedure is terminated.

H.R. 5064 requires the Secretary to reinstate full Federal review of all State agency allowances, without using any sampling method.

The bill also gives the Secretary authority to change a State agency denial to an allowance, although there is no requirement of individual review of State agency denials. The reason for different Federal treatment of State agency allowances as compared to denials is simple—once a State agency makes an erroneous allowance, the beneficiary is put on the rolls and the money starts flowing out, subject only to sporadic checks. However, if there is an erroneous denial, it can be corrected during the appeals process.

The Ways and Means staff said that about 200 examiners in BDI had become "extinct" as a result of the shift to sample review of both allowances and denials. It would therefore appear that BDI already has more than enough trained personnel to reassume full review of allowances only.

The persons who were put on the rolls erroneously after the abandonment of full review continue to drain billions of dollars from the Trust Fund. The Secretary has always had the authority, under section 225 of the Act, to terminate benefits where disability has ceased. The trouble is that this section has been enforced in a desultory manner. Further, under the State-agency agreements, the Secretary has authority to change State agency procedure by regulation. The proposed bill requires that the Secretary change these agreements in such manner that the State agencies annually review at least 10 percent of all cases on the rolls prior to enactment of this bill, selecting for such review cases where cessation has been most likely. The Secretary is further required to review individually all such cases where the State agency finds that disability is continuing.

How much can we expect to save by terminating benefits of individuals who are not really disabled? Although this again is speculative, the figures must be enormous. Assume, for example, that the percentage of really disabled persons actually remained the same from 1970 to 1975. This is not an unreasonable assumption—indeed, the number of disabled persons per 1000 insured workers went down from 1967 to 1970—from 19.7 to 19.3. Thereafter, under sample review, it rose to 27.3 in 1975. If it had remained at the 19.3 figure in 1975, the actual expenditures in 1975 would have been proportionately less, \$5.9 billion instead of \$8.4 billion—a saving of \$2.5 billion for that year alone! These losses continue and mount in value each year.

These considerations show that the imminent bankruptcy is the result of poor law and agency mismanagement. When we add possible savings in new allowances to savings anticipated from termination of prior allowances, we are in the neighborhood of \$3 to \$5 billion per annum.

It is not the intention of these provisions to deny benefits to any individual who is really entitled to them. But it is unjust to other workers and to the taxpayers to permit benefits to be collected by people who can really work. This injustice creates cynicism and a lack of faith in our entire system of government.

⁵ Public Hearings before the Subcommittee on Social Security 94th Cong., 2d sess., May 17, 1976, etc., p. 6.

⁶ Committee Staff Report, 1974, pp. 7, 30.

Ultimately, costs outrun receipts, and the entire system breaks down. Except for a small percentage, the "hard core" disabled, "disability" is not necessarily a continuing condition, and any one receiving such benefits can have no good reason to object to review of his entitlement.

INVESTIGATION OF CASES

Due to the vast number of claims which are filed, the initial determinations are a kind of winnowing process. I have already noted that about 95 percent of allowances are at the State agency level. About 84 percent are initial determinations, and about 11 percent are reconsideration determinations.

If the claimant is dissatisfied with an initial denial, he may request the State agency, in the name of the Secretary, to reconsider its decision. H.R. 5064 requires the State agency at this point, to investigate all new and potentially relevant evidence prior to the reconsideration decision.

This may sound like a minor provision. However, allow me to assure the subcommittee that this requirement and the changed definition of disability are the vital twin pillars of social security reform.

Even with the improved definition of disability contained in H.R. 5064, the concept remains a difficult standard to apply. The only way to escape philosophical speculation in individual cases is to base decisions on the facts. This means that the facts must be gathered—there must be a data-gathering process which determines all there is to know about John Jones, who alleges inability to work because of an impairment. The "facts" include medical reports, both physical and mental, biographical, educational, and vocational information, the opinions of witnesses who are expert in various fields, and the statements of Jones himself, his wife, neighbors, and friends.

The courts have uniformly held that a valid disability decision cannot be made unless all of the facts are considered together. The Social Security Administration does not follow this procedure, however. Its policy is to pick up a few facts at the time of filing, gather a few more facts later, and continue to gather more facts all the way up through layers of review. During this process, different groups of people make various assessments of the facts, which constantly change. Actually, different groups of people not only look at different facts in each case, but they also apply different standards to the different facts.

The result of this can hardly be called justice or due process of law. It is really a kind of controlled bureaucratic ambiguity. This appears to be deliberate rather than inadvertent. Indeed, a highly-placed Administration official suggests that the gathering of more evidence resulting in a reversal of a prior decision may be useless, because even more evidence might, in turn, reverse the second decision.⁸ Accordingly, too many facts about a case should be avoided—as the poet says, a little knowledge is a dangerous thing.

All of this has been documented by a Social Security task force headed by Mr. Gerald L. Boyd, of the Office of Administration, under direction from the Commissioner of Social Security. The task force visited offices, investigated, and issued its report in December 1974. It gives a detailed listing of mismanagement in Social Security programs including the different standards applied to the same case at different levels of review.⁹

The Boyd report strongly urges "a correct and timely decision at the earliest possible time in the process."¹⁰ However, the subcommittee's staff has found a steady decline in the data-gathering process at the State agency levels. Consultative medical examinations purchased by State agencies went down by about half, and there is inadequate development of vocational factors early in the progress of each case.¹¹

The result has been the opposite of the Boyd recommendation. Instead of arriving at "a correct and timely decision at the earliest possible time in the process", the Administration is steadily reducing the investigative workload at the State agency level and is transferring it to higher levels in the appellate process.

This is denial of speedy benefits to deserving claimants at the State agency level, and subversion of justice above that level. Dealing first with non-investigation at

⁸ Committee Staff Report, 1974, pp. 202-203.

⁹ The Boyd report is summarized in "Crisis in the Disability Insurance Program," *supra*, f.n. 3, at pp. 7-9. In December 1975, the subcommittee printed "Recent Studies Relevant to the Disability Hearings and Appeals Crisis," and included the Boyd report.

¹⁰ Boyd report, sec. 3 (in the subcommittee's December 1975 print, at pp. 6-7).

¹¹ Ways and Means Staff Report, 1974, pp. 98-99, 104, 154-162, 226-228.

the State agency level, the Administration in 1971 experimented with a face-to-face conference with the claimant at the reconsideration level (SARIS). This was a very rudimentary form of data-gathering. Actually, it was not intended to gather data prior to a decision, but, rather, to explain to the claimant the reasons for a negative decision which had already been made. Nonetheless, confronted with the impact of John Jones in the flesh pleading his case, the experiment resulted in a reversal of the initial denial in 20 percent of the cases. In other words, one out of every five claimants who had been denied benefits was granted immediate relief without further delay.

The purported object of SARIS was to determine whether explanations of reasons for a denial would reduce the number of requests for hearing. The Administration reported to the subcommittee that this result was not achieved, since there was "about the same national rate for hearing requests in both the control and interview groups".¹² This is statistical legerdemain, which is explained in my 1975 statement to the subcommittee.¹³ The actual result is that there was a reduction of 25 percent in requests for hearing.

Despite the success of SARIS, the procedure was never implemented. Further, the same general and unspecific denial letters are still going out at the reconsideration level. In 1975 the agency told Chairman Burke that the changes would be made by administrative regulations, as Congressman Sisk learned when he inquired about the fate of H.R. 8018 on the floor of the House. In 1976 the agency told the Comptroller General that the changes would be made in 1978. It is obvious that the agency will never reform itself, and that Congress must do so.

As in H.R. 8018, H.R. 5064 requires the State agency to give a claimant who has received an initial denial the opportunity for a face-to-face conference with an individual participating in the reconsideration determination, and further requires the State agency to investigate all new and potentially relevant evidence. H.R. 5064 adds one further element not present in H.R. 8018—where an outright denial of benefits is or may be based on an immediate probability of rehabilitation, or where a future cessation of current disability is deemed probable and a future termination date is established for this reason, a rehabilitation counselor is also to be present at the face-to-face conference.

If the claim is rejected at reconsideration, the claimant is entitled to a statement of the case, advising him in detail of the reasons for the denial. Under H.R. 5064, the statement of the case includes, where pertinent, the findings on probability of future cessation through rehabilitation.

The general purpose of these reforms before the hearing level is simply to get an accurate decision as early as possible. Claimants who are truly disabled should not have to fight their way through successive layers of review, if an adequate investigation and a meeting with the claimant will convince the Administration of the justice of the claim.

There is another purpose to pre-hearing reform. Some cases are complicated and difficult, with contradictory evidence and testimony which is suspect. If the claimant persists in his case, he is entitled to a hearing.

In order to protect this right to hearing, however, the hearing process must be limited to cases where the Administration is convinced that the individual is not disabled. If almost any case can get to hearing, the hearing process itself will be destroyed by sheer weight of numbers.

In fiscal 1976 there were over 7 million initial claims and over half a million requests for reconsideration,¹⁴ all handled by about 10,000 State agency and BDI employees.¹⁵

In contrast, there were about 158,000 hearing requests, handled by several hundred Administrative Law Judges. The latter have only one reason for existence—protection of due process for those claimants and taxpayers who say that the Administration is wrong, and who want a fair and independent hearing.

It would be very easy to destroy this right, simply by overloading the system. If all the millions of denied initial claims found their way to the adjudicatory level, adjudication would be destroyed. There would first be cries of "backlogs" (of uninvestigated cases), then demands for "more judges", and finally collapse of really independent adjudication in an avalanche of numbers. If the loser in

¹² *Ibid.*, p. 241.

¹³ Hearings before the subcommittee, etc., Sept. 19, 26; Oct. 3, 20, 1975, p. 654 at 656-657.

¹⁴ Operational Analysis of the Bureau of Hearings and Appeals, June 30, 1976, p. 25.

¹⁵ Hearings before the subcommittee, etc., *supra*, fn. 14, at pp. 654-655.

every jury trial of a negligence case in the State Courts had the absolute right of appeal to the Supreme Court, the latter would be destroyed. And so would the rights of those citizens who really need the Court and who are entitled to its protection. The same principle applies to Social Security claimants whose applications have been denied—they are entitled to a fair and independent adjudication.

This can only be accomplished by procedural changes which require the Administration to take a stand on each case at some particular time. Under the Administration's "floating application" theory, where new "facts" can be dropped into the hopper at any point, the Administration does not have to come to grips with a case until very late in the game, when the case is in the Federal courts. And, even then, section 205(g) of the Act requires the court to remand a case to the Secretary on the latter's motion filed prior to answer. The Harrison subcommittee called this "manifestly unfair" to the claimant.¹⁶

The agency tries to do the same thing at the hearing stage, by a procedure called "informal remand". Once a claimant files a request for hearing and shows his determination to fight, the agency may decide to do a little more investigating. H.R. 5064 ends this delaying tactic by giving the Administrative Law Judge jurisdiction of the case once a hearing request is filed.

A claimant truly entitled to benefits is not damaged by a requirement that the Administration take a stand, or "state its case". On the contrary, he is aided by knowing the exact reason that his claim has been denied, and is thereby able to frame his appeal. If the denial is sustained, he can file a new application and submit new evidence.

A malingering claimant, on the other hand, is assisted by the right to throw in new "facts" at every stage of the proceeding. By submitting the new "fact" in documentary form, an affidavit or new "medical report" for example, he is able to evade a conclusion made by an Administrative Law Judge, who saw and heard him, that he is not telling the truth.

The principal beneficiary of the present system of managed ambiguity is the Social Security bureaucracy. The system reflects its essentially paternalistic attitude towards Social Security applicants, and enables it to maintain administrative control over cases long after the point when they should have entered the quasi-judicial stage. An American taxpayer, however, is not a medieval serf seeking gratuities from the lord of the manor. He has paid in his money, and he has rights. One of those rights is to know where he stands at each point in the disability determination process. The Administration at present simply refuses to tell him this.

H.R. 5064 requires the Government to do so. As indicated, it must completely investigate the case at the reconsideration level, and give the claimant a face-to-face interview with an individual participating in the decision. If the Government is still of the opinion that the claimant is not disabled, it must give him a written statement of the case telling him the reasons.

HEARINGS

If the claimant is still dissatisfied, he may file a request for hearing before an Administrative Law Judge. H.R. 5064 repeats the requirement in H.R. 8018 that claimant must file specific exceptions to findings in the statement of the case.

There was some criticism of this last requirement in H.R. 8018 in 1975, on the grounds that many Social Security claimants are poorly educated and unable to frame specific exceptions. However, the matter never came to a head, since the bill was never reported out.

Last summer, during the American Bar Association conference in Atlanta, the Conference of Federal District Judges unanimously adopted a resolution that a corps of attorneys be created in the Department of HEW to represent both claimants and the Government in Social Security hearings. A similar resolution was adopted in ABA's Conference of Administrative Law Judges.

These recommendations are sound. The agency has always opposed any judicialization of Social Security procedures, and has maintained that these procedures are "non-adversary" in nature. Whatever validity this contention might have at the initial determination level, it becomes completely fictitious after a claimant has been rejected twice and still insists that he is disabled. He is insisting that he is entitled to a claim which, back in 1972, had an actuarial value of \$56,000, and is undoubtedly more valuable today. A current memo from an

¹⁶ Quoted in committee staff Report, 1974, p. 41.

Appeals Council member puts the value at \$100,000. How can the agency contend that a hearing involving this amount of money, after two denials, is "non-adversary?" With disbursements in excess of \$10 billion this year, and bankruptcy imminent, how can HEW maintain the facade that it has no "adversary" interest in a \$100,000 claim which it has twice found to be without merit?

H.R. 5064 requires the Secretary to appear by counsel, or otherwise, and defend his denial of benefits. I do not see how the agency can take any other position in today's circumstances. Some one must be designated to defend the Trust Fund. Although some claimants do not have counsel, about one-third today are represented at hearings by attorneys. They have one interest in mind—a favorable award for their clients. This is as it should be. However, with no one to defend the Trust Fund, and loose rules of evidence available, it is possible to "create a record" showing disability which is not really true. And it is this record which goes to court. The Court, of course, must base its decision on the record.

The Administrative Law Judge cannot defend against this procedure. He is required to be impartial, and any cross-examination of the claimant by him will subject him to a charge of bias in a Federal district court. I shall return to the inadequacy of this procedure in a moment, but for present purposes I emphasize the absolute necessity of Trust Fund representation at the hearing level.

It is this necessity which creates the countervailing necessity of claimant representation. Although about one-third of the claimants are represented by attorneys, two-thirds are not so represented, and many state that they cannot afford counsel. It is manifestly unfair to put an illiterate and impoverished claimant up against astute government counsel. I realize that there are some ways in which counsel for the claimant could be and are provided, such as by legal aid societies and charitable efforts by private law firms. But these are haphazard, and more than half the claimants are still unrepresented. In accordance with the recommendation of the federal district judges and the ABA's Conference of Administrative Law Judges, H.R. 5064 requires the formation of a corps of government lawyers to defend claimants and the Trust Fund. I shall describe the formation of this corps and its cost in a moment. The latter item, cost, is not as great as might be expected, and in fact is nonexistent.

Let us now return to the claimant who has requested reconsideration of an initial denial. He has requested and received a face-to-face conference, and the State agency has fully investigated all the pertinent evidence. The agency is still of the opinion that the claimant is not disabled, and spells out the reasons in a statement of the case.

H.R. 5064 at this point requires the State agency to notify the claimant that he may, if he so desires, obtain government counsel by submitting a notice of intention to file a request for hearing and by requesting counsel for same, together with an averment that private counsel is not available on acceptable terms. The agency is then required to supply counsel, who is made available to the claimant well in advance of the 60-day limit for filing a request for hearing. This attorney, then, in consultation with the claimant, can assist him in framing specific exceptions to the findings in the statement of the case. If the claimant fails to except to a finding, he is deemed to be in agreement with same. Like the Government, the claimant alleging entitlement to a \$100,000 benefit is required to "state his case."

If the Government's statement of the case denies the claim because of the claimant's rehabilitation potential, or makes a finding of disability for a limited term because of such potential, the claimant may except to this finding. Upon the filing of such exception, the State agency is required to offer the claimant a vocational evaluation at a State rehabilitation facility. This is a more complete procedure than the assessment of the rehabilitation counselor at the reconsideration interview, since it places the claimant for the first time in a controlled vocational setting. He can actually be observed by professionals, and an appraisal can be made which has great validity.

It is this aspect of H.R. 5064 which directly meets the most prevalent criticism of the present individualized definition of disability, i.e., that you cannot really determine whether this individual is unable to work unless you see him in an actual work setting. H.R. 5064 provides for this. In order to minimize cost, it makes this provision only rehabilitation potential is really in issue, i.e., only after a reconsideration determination which relies upon such a finding, and, even then, only when the claimant files a request for hearing together with a specific exception to this particular finding in the statement of the case.

After the claimant has been evaluated at a rehabilitation facility, H.R. 5064 requires the State agency to write an evaluation of the claimant, and this becomes part of the record. Of course, if the claimant disagrees with the evaluation, he may by counsel contest it in the hearing before an Administrative Law Judge. If a claimant refuses to undergo such evaluation, he is deemed to have abandoned his claim, and the reconsideration determination becomes the final decision of the Secretary.

We thus have a case ready for trial, with counsel on both sides. In order to assure fair defense of both claimants and the Trust fund, H.R. 5064 provides that attorneys will be hired by the Secretary from a register maintained by the Civil Service Commission. Placement on the register may be obtained by a qualifying examination. The Secretary will be required to rotate the duties of the attorneys so that they defend the Trust Fund and claimants an equal amount of time, and may not discipline or reward any such attorney based solely on his ratio of cases won for the Trust Fund, or lost for claimants. If government attorneys could get promotions by winning Trust Fund cases and losing claimant cases, it is clear that the claimant would not have adequate representation.

The cost of such a corps would be more than offset by the inevitable savings. At a current actuarial value of about \$100,000 per claim, a Government attorney successfully defending the Trust Fund in just one case saves that amount of money for the Fund. This would be more than enough to pay his salary—and that of the claimant's Government lawyer on the same case—for an entire year.

The percentage of allowances at hearing will have to go down. In the first place, more cases will be discovered to have merit at the reconsideration level, and will be paid there. SARIS established that. This will leave less meritorious and more difficult cases for hearing. Although claimants are now represented at hearing by private counsel in about one-third of the cases, the Trust Fund is never represented. H.R. 5064 will correct this imbalance by supplying Government counsel in all cases. This will tend to prevent unjustified allowances at hearing, and the creation of distorted trial records for judicial review. It is reasonable to expect that each Government attorney will win at least one case per year for the Trust Fund, which would have been decided otherwise without such representation, and thereby effect savings more than enough to offset the cost of the attorney corps.

Under H.R. 5064, there will be a markedly reduced number of hearings. SARIS, a rudimentary experiment in comparison with H.R. 5064, established a 25-percent reduction, and an even greater percentage may reasonably be anticipated under the proposed legislation.

The hearings will be full-blown judicial proceedings, with about \$100,000 at stake, and attorneys on both sides. Many cases will involve sharply conflicting scientific evidence and difficult credibility resolutions. In addition to the already formidable requirements for determining disability, the Administrative Law Judge will have to add actuarial and accounting skills in order to make determinations on the feasibility of rehabilitation services. In the event some facts are not fully developed, the Administrative Law Judge will have discretionary authority to remand the matter to an appropriate component of the Social Security Administration for factual investigation. Other provisions in H.R. 5064 will regularize agency review of Administrative Law Judge decisions, and the circumstances in which the latter may be reversed.

SUMMARY

H.R. 5064 promotes efficiency in government by eliminating the waste of billions of dollars in a social program which most Americans consider vital, and which is now threatened with bankruptcy. It ennobles the lives of our citizens by holding out the hope of a decent and productive life for those who can be rehabilitated, instead of a life sentence of uselessness. It provides social justice by informing American citizens where they stand on their applications, in contrast with the current mystery which enshrouds the denial of applications. And, finally, in a very small fraction of the cases, where the matter has hardened into a dispute over a significant amount of public money, the bill establishes an improved judicial setting for the resolution of such disputes, in the American legal tradition.

For these reasons I urge that H.R. 5064 receive your favorable report to the full committee. I thank you for this opportunity.

Mr. JACOBS. Judge Grossman, what you did was take 30 seconds less than twice your time, so I wouldn't trade my eyesight for anything but I couldn't quite see that, either.

Mr. Gephardt.

Mr. GEPHARDT. Thank you, Mr. Jacobs.

I have, of course, talked to you on a number of questions because it was our idea for you to come here today. You, obviously, have thought through very well, even though very long today, but very well, the questions surrounding disability law and social security. I support your coming and rest assured that your testimony and your experience will be taken into account as we review this law.

I appreciate your statement and will give your testimony very much consideration.

Mr. GROSSMAN. Thank you. I appreciate meeting with you and I was very happy with the assistance you gave me in order to be a witness.

Ms. KEYS. Well, I just would like to thank the good judge, and your examples were certainly well chosen bits of testimony presented in the hearing in this committee to identify the clear differences between the two bills. And I thank you.

Mr. GROSSMAN. Thank you.

Mr. JACOBS. Judge, we have talked to Congressman Levitas about this legislation. I think there are many imaginative departures that are proposed.

May I ask, do you think that the administrative law judges would be more greatly burdened by your legislation?

Mr. GROSSMAN. They would have to engage in additional intellectual exercises. They would have to obtain the ability to make reasonable determinations as to the alternative economic feasibility of, for example, paying an individual who is age 50 disability insurance benefits until age 65, or, on the other hand, to invest \$8,500 in order to rehabilitate him.

These, I believe, are actuarial and accounting skills that would have to be acquired. I have confidence my colleagues would be able to do so.

Mr. JACOBS. Would that have anything to do with your voting yourself in a pay raise?

I believe it raises you from GS-15 to—what is it? GS-16?

Mr. GROSSMAN. It does, sir. It is not the first bill that has done so. Of course, Congressman Sisk has made a strenuous argument to that effect this morning.

I wish to say, sir, on the subject of rate raises, I am only trying to implement the opinion of the Bureau Director, Robert Trachtenberg, who on February 19 wrote a memorandum to the Commissioner of Social Security giving extensive reasons for why the level should be at level 16. It is too long to read now, but I would be very glad to submit a copy of the memorandum for the subcommittee.

[The memorandum follows:]

TO : Commissioner of Social Security

DATE February 18, 1977

AD-170

FROM : Bureau of Hearings and Appeals (J)

SUBJECT Grade GS-16 for Administrative Law Judges - ACTION

Following your meeting with the President and Board of Governors of the Association of HEW's Administrative Law Judges, you asked that I furnish you with my views on the long standing issue of seeking GS-16 graded positions for the ALJs.

I would recommend your taking a public posture among the ALJs in favor of the GS-16. I do have some thoughts on how the upgrading could occur and under what conditions, which I will set out later in this memorandum.

I believe that the broad discretion afforded an ALJ due to the several subjective elements of disability and vocational determinations, demands the employment of the highest level adjudicators possible in order to protect the public interest. Nevertheless, I do recognize that as a matter of job classification, it may be a close question as to whether the position meets GS-16 standards. It may be tough to show that Disability adjudications (which is 90 percent of the workload) entail the level of complexity, complicated factual issues, and issues of law which meet the GS-16 level.

There are, however, things that can be done to make the grade even more supportable. I think the ALJs' grade posture loses something by being SSA's ALJs. A good case could be made for elevating the ALJs to the Office of the Secretary and, indeed, providing the Secretary with an adjudication body which provides administrative justice on a full range of HEW programs. Procedures for adjudicating cases before the body would vary with the type of case, program requirements, the needs of the parties, etc. The procedures would be geared to offering a range of proceedings from due process, evidentiary hearings to informal dispositions, to anything in between.

As you know, BHA already furnishes ALJs for a variety of HEW cases not directly involving SSA. Even though this has workload implications for SSA, I do this because it seems to make

sense to assist another component of DHEW and it comes as a welcome relief to Disability "punchy" ALJs. Likewise, I am convinced that BHA is ill-suited organizationally within the SSA structure and the rest of SSA is ill-equipped conceptually to deal with the role of BHA. I believe, in short, that there is much merit to removing BHA from SSA. If nothing else, and I believe there is more, it would better enable you to criticize the formal adjudication process of BHA without it appearing that such criticism is designed to control its decisional processes.

For a fuller discussion of the precise reasons why I support the grade, please look at my memorandum to you of July 15, 1975 (attached). Of these reasons, I am most persuaded by the demands imposed on the ALJs to dispose of great numbers of cases--yet build a complete record and issue a decision which will withstand scrutiny by the Appeals Council and the Courts. That's darn tough and requires ALJs equal in qualifications and ability to those ALJs in the economic regulatory agencies.

If you are inclined to support the GS-16 grade, I would recommend that the legislative route be seriously explored even though I recognize the Executive Branch's reluctance to accept legislated grades. However, given our track record with CSC, I think legislation will be necessary. Even though it would be simpler to include all permanent ALJs, I would also recommend that not all of the permanent ALJs receive the GS-16. It could go only to RCALJs and ALJICS; or, a Judicial Conference could recommend to the Secretary promotions of only the most qualified based upon objective standards; or, the GS-16 could go to ALJs who are assigned expanded judicial responsibility under the reorganization which I suggested.

RECOMMENDATIONS:

1. That you support grade GS-16 for a select number of ALJs (about 300).

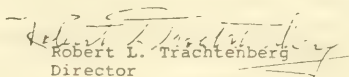
APPROVE _____ DISAPPROVE _____ DATE _____

2. That the Director, BHA, prepare a Commissioner's statement of support for the GS-16, to be disseminated to the ALJs.

APPROVE _____ DISAPPROVE _____ DATE _____

3. That the Director, BHA, prepare a paper from the Commissioner to the Secretary recommending the establishment of a Departmental Task Force on Adjudicatory Processes to examine proposals for a centralized adjudication office in OS, which would include the functions now administered by BHA.

APPROVE _____ DISAPPROVE _____ DATE _____


Robert L. Trachtenberg
Director

Attachment

Tab A: Bill Report on H.R. 2995 and H.R. 3218

PA-20

TO Commissioner of Social Security

JUL 11 1967

HHA-A1

Bureau of Hearings and Appeals

Bill Report on H.R. 2995 and H.R. 3218 -- INFORMATION

I did not sign the file copy of the subject Bill Report prepared by OPEP because I do not agree with the position taken with respect to the third section of H.R. 2995, which provides that any administrative law judge who presides at any hearing on a claim arising under titles II or XVIII of the Act shall receive compensation at a rate not less than that prescribed for GS-16.

I believe the time has come for the GS-15 administrative law judges employed by this Bureau to be classified at the GS-16 level. The responsibilities of the position have increased considerably since the position was last classified at a GS-15 in 1967. The basic statutes have been amended and programs expanded; new programs have been added; there is more attorney representation, which tends to complicate the process; various court decisions have resulted in new burdens being placed on the judges; etc. These are a few of the things that have occurred since 1967.

Over 90 percent of all of the administrative law judges employed by other Federal agencies are at or above the GS-16 level. Our administrative law judges are involved in equally complex work and from the standpoint of equity should receive comparable compensation. The GS-16's in other Federal agencies are specialists in one Federal law; our administrative law judges are specialists in titles II, XVI, and XVIII of the Social Security Act, and title IV of the Federal Coal Mine Health and Safety Act, as amended. The administrative law judges handling these cases have a responsibility at least equal to those of other administrative law judges in GS-16 positions. The fact that they are dealing with the rights of individuals rather than property rights should have no effect on their standing.

FILE
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1-2	Wendell	4/1/67		Wendell	7-15			
1-4	Wendell	4/1/67						

I also believe that we should not disregard the significance of the mounting workload. The enormity of the workload dictates an unprecedented (in relation to any other Federal agency) level of productivity. This pressure demands a unique judicial skill which by itself urges adoption of the GS-16 grade for SSA's ALJs. It is very demanding for our ALJs to render findings of fact, conclusions of law and the necessary evaluations of evidence in a production atmosphere where each decision is subject to scrutiny by the A/C or a U.S. District Court. The fact that our District Court reversal rate under these circumstances is not greater confirms the quality of most of our ALJs. Stated another way, our ALJs are responsible for dispensing a system of mass administrative justice and performing such function in a manner that assures the terms "mass" and "justice" are not fundamentally incompatible. In making ALJ grade decisions, we should not lose sight of the fact that our ALJs should not be penalized because the SSA system of justice does not represent the traditional exercise of judicial intervention, and that the ALJs burden is of a higher order than other agency ALJs because of the dual responsibility for fairness to claimants and adequate respect for their constitutional, statutory and regulatory rights in the course of dealing with a flood tide of cases.

I do not believe it is appropriate to compare the administrative law judge position with that of regional commissioner or ^{for} that matter with any other type of position in the Department. The administrative law judge position is unique and does not lend itself to comparison with other types of positions. SSA's ALJs meet virtually all the requirements for GS-16 ALJs, and indeed, SSA's ALJs in many cases perform (on detail to other Federal agencies) GS-16 level work. These details would be even more frequent except that they are discouraged by BIA due to the backlog.

We cannot ignore the fact that our inability to be competitive with the agencies employing GS-16 ALJs will continue to make SSA the training ground for other Government agencies. This alone is expensive and not good business. Since January 1, 1971, we have lost 55 ALJs to other Government agencies. While this is not a dramatically high number, the point is that the ALJs

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we lose are our better, more productive ones. Likewise, being a grade lower than ALJs in other Government agencies generates an emotional issue among our ALJs which I believe negatively impacts on productivity.

The position needs to be classified at the GS-16 level in order for us to be able to maintain a stable administrative law judge corps, attract the best qualified individuals, and improve the quality of the hearing process. An added benefit will be increased acceptance by the public of the quality of the adjudicative process with a consequent reduction in litigation.

Robert L. Trachtenberg
Director

cc: OPEP
Mr. Schultz
Mr. Wolf
Mrs. Mandzak
Official File: IHA-A:Room 101W
P&F Reading File
IHA-A1:Mandzak:bna:7/8/78

Mr. JACOBS. We appreciate your testimony very much. Our next witness will be William DuKate, Jr. of Baltimore, Maryland.

STATEMENT OF WILLIAM K. DuKATE, JR., BALTIMORE, MD.

Mr. DuKATE. Mr. Chairman, I am unaware of the legislative process of these two bills that are being proposed.

I am a disability examiner, grade 11. I propose no grade increases for myself.

I did listen to a lot of the testimony today. I want my written transcript to be a part of the record.

Mr. JACOBS. It will be.

Mr. DuKATE. I heard a lot about figures where 95 percent of cases at the initial and recon level were allowed. I also heard a lot about vocational rehabilitation training, which I am unaware of in my field.

I only have one question in this area, and it has to do with the hearing level. I have heard that no one disability that goes to the hearing level or higher is ever referred for vocational training, and I was wondering why that is.

The administrative law judge who testified before me apparently says that they have no discourse in this area and the State agencies never see these cases again so these claims are never vocationally referred. If they are allowed or denied, they are never vocationally trained again.

I want to reiterate some of the things that I state in my statement. Basically, it is possibly something that you cannot do anything about. It has to do with inadequacies in BDI's management. A good friend of mine, Donald Davis, testified before this House Ways and Means Committee last year and the social security deemed fit to get rid of the man.

My question is, as I am testifying here, I am unaware of the proposed legislation and whether my testimony will really matter.

My main talk is about the quality control aspects of the title 2 and 16 programs.

Let me give you a history of the State agency review. For about 17 years we reviewed the State agencies 100 percent and then we switched to 5 percent. The only problem is that BDI could not set up a system that could adequately guide the States in what they were doing wrong.

The BDI management thought that this system may work. However, they did not set up an adequate quality control system to give kickbacks to the State agencies to show where they were weak. In certain areas it is very easy for one to determine whether or not a person meets the listing. Yet in others it is very difficult.

Then we go to the aspect of vocational assessment where the doctors first determine whether a claim is moderately severe. And then we supposedly go into the vocational aspects of the case. This is not the case since the vocational adjudicatory process is a fraud.

The only problem in BDI is that BDI cannot set up the medical and vocational review system. Why not? Simple. One is that we needed a "Big Mac" system. You may think this far out but "Big Mac" stands for MacDonalds.

MacDonald is the tops as far as specialization. What they require of examiners in BDI is to be aware of all body systems and to question

our medical staff and to write back on the cases to the State agency and the CRS as to their inadequacy of development in certain body areas. It is difficult for me as an examiner to do this with a set of books that I have. One called Dorland's, which is just basically a dictionary of medicine; and one a Merck's, which is a glorified layman's book describing various illnesses.

A specialization if provided in BDI where an individual would be an expert, for example, in the cardiovascular system, or possibly the respiratory system—better kickback would be given to the State agencies.

I heard Mr. Parson's testimony today that he would like 100-percent review adopted. I don't think that 100-percent review is going to solve the problem. It is in both bills apparently and that is why BDI is planning on 100-percent review.

I think the problem is that BDI management never set up a 5-percent review system that was adequate.

Let's go into vocational review of cases. This is a complete fraud. First of all, the examiner is required, or at least theoretically is required to determine residual functional capacity. This is an impossibility in many cases. Only psychiatrists are well qualified in this area. Unless you have certain medical facts such as range of motion studies, such as determination as to how much a person can lift, what they can lift, how often they can walk, how long they can stand, et cetera—one cannot go into a vocational aspect of a case. We need more guidance and this has been brought out by Ms. Lorraine Cronin today that they are suffering from lack of guidance from the central office. We need much more guidance and clarification in this vocational area. We also need much less oral instructions to guide us which disappear when someone yells about them, much like the oral instructions which were allowed to put 50,000 miners on the rolls based on affidavits back when Nixon was trying to pay off his political debts in 1972.

I suggest that one of the best ways that we can do this is to get rid of the deadwood that is so prevalent in BDI's management. Possibly we should keep strict control on management. Possibly the State agencies should be the ones that are reviewing BDI rather than vice versa.

Jimmy Carter has made a statement, that certain management should be on a contractual basis. I am in 100-percent agreement with that. I don't know at what grade level this should be. I think it should be as low as a GS-15 level.

Also, let's talk about whether Social Security can really terminate a State agency. I see thousands of cases cross my desk and I have seen many problems, especially in certain States, such as the State of New York. They have adjudicated claims so horrendously that it is unrealistic to believe that they would be allowed to adjudicate these claims anymore and, that there is a general philosophy throughout Social Security Administration and elsewhere where people who work at the Social Security believe that if a person is not put on welfare then he will be put on some other program, such as BDI disability programs. This philosophy is at the heart of why our program has failed.

This is all I have to say. I welcome any questions that any of your panel has.

I am sorry I am a hostile witness, but that is the way I feel.

Mr. JACOBS. I don't think you are all that hostile, sir. We appreciate your appearance.

Mr. GEPHARDT. I am sorry I have no questions. I have a plane problem.

Mr. DeKATE. I am glad I talked very short so you can meet your plane.

Mr. GEPHARDT. I appreciate your testimony. It will be taken into account. I appreciate your coming.

[The prepared statement follows:]

STATEMENT OF WILLIAM K. DeKATE, JR., BALTIMORE, MD.

SIRS: I am going to make this short and sweet. My question is why are government employees harassed and disliked when we try to blow the whistle on corruption and mismanagement in government. Many government workers have gone down this road before. Question. How will Social Security be realigned properly if Congress did such a sloppy job on a lesser complex organization—Post Office.

B.D.I. is already geared to going to 100 percent review of the Disability cases so are these hearings worth anything. Does Congress call the shots or does B.D.I. Management. I am talking about properly running the quality control aspects of the Title II and XVI programs. Let me give you a history of the State Agency review. For about 17 years we reviewed the state agencies 100 percent, and then we switched to 5 percent. The only problem is that B.D.I. could not set up a system that could adequately guide the States in what they were doing wrong. Why not. Simple. One is that we needed a big mac system where certain examiners would have expertise in certain body systems while others would have expertise on other systems. This way we would know more about what we were talking about when we questioned our Medical Staff as to the judgment of their doctors or when we wrote up a case in order to show the state which way to do a case best. This Big Mac theory could be used throughout government. Second our vocational review of the case is a fraud. It has been so bad that management drew up a chart for examiners to use when adjudicating a claim under regulation 1502(b) of the act but they have now come up with the term residual functional capacity, however only qualified psychiatrists know how to ascertain a RFC. We need much more guidance and clarification in this area. We also need much less oral instructions to guide us which disappear when someone yells about them, much like the oral instructions which were allowed to put 50,000 miners on the rolls based on affidavits back when Nixon was trying to pay off his political debts in 1972.

I suggest that we get rid of the deadwood that is so prevalent in BDI's management. Possibly we should keep strict control on their time rather than management harassing the clerks as it is now and than being apathetic toward the workers concerns. Hiring Social Security Management—GS 14 and above—on a contractual basis may be one way of seeing that the ship is being run a little better. Also lets not have any raiding of the system that has been so noticeable by such States as New York? I don't know if my testimony today will do any good, because I hold Congress as responsible in many areas where they have actually allowed the public to think of this system as a retirement system rather than a supplemental system. The New York problem has many aspects especially when many social security workers say that if a person doesn't get welfare from New York then he can get disability benefits. I would look into the running of the New York State Agency and the Social Security Regional Offices as to why these poor decisions were allowed to be generated without any recourse on Social Security's behalf. This is all I have to say. Thank you for having me today.

Mr. JACOBS. The next witness to be represented is CACTUS by Mr. R. Wayne Long of Orlando, Fla.

STATEMENT OF R. WAYNE LONG, CHAIRMAN, CITIZENS AGAINST CONFISCATORY TAXES IN THE UNITED STATES (CACTUS), ORLANDO, FLA.

Mr. LONG. I want to thank you for letting me appear before the committee. I appreciate this opportunity to speak. As spokesman for CACTUS, I wanted to make known the concerns that the people have toward the present form of taxes commonly referred to as social security. Social security has a connotation of retirement benefits. In general, the overall status of retirement benefits in this country today are deplorable. This is true not only of social security but also of most private retirement programs of corporations and workers' unions. The one exception to this is for those persons who are or were, for periods of time, employed by the various levels of government.

There are tens of thousands of people in this country who are living on social security or private retirement funds are living in poverty. I ask, why? The answer I get is politics and politicians have deprived them of sound actuarial retirement systems by subversion of the social security law as conceived by our Nation's leaders several generations ago.

Social security has become nothing more than a means for redistribution of the income of a majority of the workers and the corporate or entrepreneur sector of the United States. By the way, this is a redistribution of the workers' non-tax-sheltered worker's income.

The corporate portion of social security taxes is in fact sheltered. I would like to ask, how much of your retirement payments and those of civil servants are redistributed to the masses in the form of social insurance payments? I say, none. These latter retirement funds are, in fact, actuarially sound through the power of taxation.

As this country approaches the point of zero population growth as it is today from a natural birth point of view, we need to be more conscious of retirement taxes versus social insurance taxes and how each is derived. In its present form, social security with the increasing number of persons over 65 years of age will impoverish the workers who must support them.

I say, therefore, drastic changes are required now. The social insurance needs in this country are phenomenal. I think we are all aware of that.

To finance these needs out of what is believed by most persons to be retirement taxes is absurd. Especially when it is not shared by every person who has earned income. The people of this country are not stupid. They are basically hardworking people who want a fair shake. However, as more and more government dole is made available, more and more people are willing to forego their ancestral beliefs and live off of those who are willing to pay.

I say to you that the day is fast coming when the supposed "haves" say, "enough is enough." At the present time there is a concerned effort to obtain signatures to the "Petition for Redress of Taxation." By years end, it is hoped that there will be enough enthusiasm for this effort that the social security and social insurance programs will

be properly funded through our tax laws. We may be wrong but our next appearance in this great Capital City may be to plead our case to those who truly hear and see what is needed and desired by the heart of this great Nation.

I ask you, Members of Congress, is it fair to tell the workers of this country that we had to spend their retirement contributions for other social insurance programs, therefore, live in poverty—during your retirement years—just a little longer until we find a way?

We are an aware citizenry. We voted for tax reform when we elected Mr. Carter to be our President. Social security tax reform would certainly go a long way toward convincing the people that the Congress is capable of understanding their "will" when they voted for a change of administration during such trying times. It would also restore a lot of confidence in our elected legislators which, from all indications, is at an all time low.

We, as an organization, would like to ask the membership of this committee to keep the following questions in preparing for the vote.

1. Do you as a group consider the social security tax law as now written to be regressive or progressive?

2. Do you ever intend to remove the social insurance aspects from social security and fund them out of general taxes where they should be funded?

3. Is the lower income retiree today being treated fairly?

4. Has this committee considered the desirability of an actuarial system and conducted any studies real or hypothetical as to the impact of such a system?

5. Does any member of this committee have any real knowledge of the needs of retired persons?

6. Will the retiree and the worker of the future be treated fairly?

7. Do you intend to create legislation that will require all persons with earned income to share the cost of social insurance needs?

8. When people are forced into retirement by rules and regulations is it reasonable to expect that they can suddenly live on anything less than 60 to 65 percent of their preretirement income? That question would be only related to middle income people. Most people in this country are below middle and they obviously need to have more than 60 to 65 percent.

The recommendations my committee has to make are:

Remove all social insurances from social security fund and place them under general taxes. This eliminates discriminatory aspects of the present system.

Reduce the bureaucracy associated with the administration of the four separate OASDHI trust funds. The administrative costs of one of the four funds is more than 12 percent of benefit payments.

Restore social security to an OASI trust fund, reduce the tax rate significantly, NGT 3 percent, and apply the rate to the total salary and wages of all workers. This will maintain the trust fund for OASI purposes.

That concludes my statement.

[The prepared statement follows:]

STATEMENT OF R. WAYNE LONG, CHAIRMAN, CACTUS

As spokesman for the CACTUS organization, I wish to make known the concerns that the people have toward the "present form" of taxes commonly

referred to as Social Security. Social Security has a connotation of retirement benefits. In general, the overall status of retirement benefits in this country today are at best deplorable.^{1,2} That is true not only of Social Security but also of most private retirement programs of corporations and workers' unions.³ The one exception to this sad state of affairs is for those persons who are or were, for lengthy periods of time, employed by the various levels of Government.⁴

Tens of thousands of persons in this country who are drawing Social Security or private retirement funds are living in poverty. Why? Because politics and politicians have deprived them of sound actuarial retirement systems by subversion of the Social Security law as conceived by our nation's leaders more than two generations ago.⁵ Social Security has become nothing more than a means for redistribution of the income of a majority of the workers and the corporate or entrepreneur sector of the United States. By the way, a redistribution of non-tax-sheltered worker's income.^{6,7} The corporate portion of Social Security taxes is in fact sheltered. Gentlemen, how much of your retirement payments and those of civil servants are redistributed to the masses in the form of social insurance payments? None! These latter retirement funds are, in fact, actuarially sound through the power of taxation.⁸

As this country approaches the point of "zero population growth" as it is doing today, we need to be more conscious of retirement taxes versus social insurance taxes and how each is derived. In its present form, the increasing number of persons over 65 years of age will impoverish the workers who must support them.⁹ Therefore, drastic changes are required now! The social insurance needs in this country are phenomenal! To finance these needs out of what is believed by most persons to be retirement taxes is not only absurd but assinine. Especially when it is not shared by every person who has earned income.¹⁰ The people of this country are not stupid, nor are they dolts. They are basically hard working people who want a fair shake of the dice. However, as more and more Government dole is made available, more and more people are willing to forego their ancestral beliefs and live off of those who are willing to pay.¹¹ I say to you that the day is fast coming when the supposed "haves" say, "enough is enough".¹² At the present time there is a concerted national effort to obtain signatures to the "Petition for Redress of Taxation". By years end, it is hoped that there will be enough enthusiasm for this effort that the Social Security and social insurance programs will be properly funded through our tax laws. We may be wrong but our next appearance in this great capital city may be to plead our case to those who truly hear and see what is needed and desired by the heart of this great nation.

I ask you, gentlemen of the Congress, is it fair to tell the workers of this country that we had to spend their retirement contributions for other social insurance programs, therefore, live in poverty (during your retirement years) a little longer until we find a way? In the words of the "now" generation, that is known as a "cop out" and it won't "wash" today! We are an aware citizenry! We voted for tax reform when we elected Mr. Carter to be our President. Social Security tax reform would certainly go a long way toward convincing the people that the Congress is capable of understanding their "will" when they voted a change of Administration during such trying times. It would also restore a lot of confidence in our elected legislators which, from all indications, is at an all time low. I ask you gentlemen, can you hear the voice of the people?

¹ Social Security is penalizing low income people by high tax rates preventing private pension building.

² Retirees are penalized if earned income exceeds poverty limit.

³ Because of non-working Keynes theory, inflation is ruining benefits of private pension plans as well as Social Security tax plan.

⁴ General taxes also support Civil Service Retirees. The reverse is not true. See (8) below.

⁵ Social Security was intended as supplemental income for retired workers not a panacea of Social Insurances and total retirement survival.

⁶ Workers cannot afford 5.85 percent of their wages to be non tax-sheltered and then be capable of further investment for retirement.

⁷ Private enterprise and even regular savings accounts would be a better return toward retirement than Social Security. Forty (40) years of \$1,930/year at 5 1/4 percent = \$250,000 savings account which could net an income of greater than \$2,000/month for life. For 20 million persons equity = \$5 trillion.

⁸ See Table 19 for contributions to Civil Service Retirement fund by our taxes. In 1974 it was \$1,800 per employee or twice the Civil Servant's contribution.

⁹ Table 48 bears out the trend data of increasing numbers of persons over age 65.

¹⁰ Unequal sharing under the present system is supported by Tables 6 and 33.

¹¹ Increasing welfare statism is reflected in Table 1 and 2. Welfare has tripled in 9 years. Welfare payments in 1975 exceeded the Gross National Product of 1950 (a war year).

¹² Table 28 shows Social Security fund payouts doubled from 1969 to 1974 and it was not all retirement benefits. Only \$37 billion of \$58 billion was for retirement in 1974 (see table 14).

We, as an organization, would like to ask the membership of this committee the following questions and have your answers for the record.

1. Do you as a group consider the Social Security tax law as now written to be regressive or progressive?

2. Do you intend to remove the Social Insurance aspects from Social Security and fund them out of general tax revenues?

3. Is the lower income retiree today being treated fairly?

4. Has this committee considered the desirability of an actuarial system and conducted any studies real or hypothetical as to the impact of such a system?

5. Does any member of this committee have any real knowledge of the needs of retired persons?

6. Will the retiree and the worker of the future be treated fairly?

7. Do you intend to create legislation that will require all persons with earned income to share the cost of social insurance needs?

8. When people are forced into retirement by rules and regulations is it reasonable to expect to that they can suddenly live on anything less than 60 percent to 65 percent of their pre-retirement income?

I will now entertain any questions that you may have regarding this statement or position of CACTUS. I would request that your questions take into consideration that our group is unfunded; that our data comes from Government agencies upon request; that every member works for a living and we solicit no funds. I am here before you because of the great discrimination inherent in the present law.¹³ As an organization we are apolitical. We have no political axes to grind or oxes to gore. We are citizens concerned about the future of our nation. There is disaster ahead if changes are not made now!

RECOMMENDATIONS TO THE 1977 SUBCOMMITTEE ON SOCIAL SECURITY

1. Remove all social insurances from Social Security fund and place them under general taxes. This eliminates discriminatory aspects of the present system.

2. Reduce the bureaucracy associated with the administration of the four separate OASDHI trust funds. The administrative costs of one of the four funds is more than 12 percent to benefit payments. (See Table 32).

3. Restore Social Security to an OASI trust fund, reduce the tax rate significantly (NGT 3.0 percent) and apply the rate to the total salary and wages of all workers. This will maintain the Trust fund for OASI purposes. Tables 6 and 28 indicate that in 1974 \$344 billions of earnings were not taxed. At a 3 percent rate per employee and employer that amounts to \$20 billions. With earnings increases since 1974, a 3 percent rate would yield over \$70 billion in 1978, probably more than enough to fund OASI. OASI in 1974 cost 51 billion dollars. The social insurances cost \$20 billion. Reference Tables 28 thru 31. As can be seen from this data, OASI funds will soon be required for social insurance purposes, as the social insurance costs are increasing by leaps and bounds (25 to 35 percent year versus 12 percent year for OASI).

Mr. JACOBS. Thank you, sir. I don't want to be a stickler but could you tell us what CACTUS stands for?

Mr. LONG. Citizens Against Confiscatory Taxes in the United States.

Mr. JACOBS. Good, or was that your question?

Ms. KEYS. I have no questions, Mr. Chairman.

Mr. JACOBS. We appreciate your testimony, and the patience with which you waited to give it.

I think there are no further questions. Your statement is in the record. I want to thank you for being here.

This subcommittee adjourns now until Tuesday next to meet. I presume, at 10 a.m. in room 1302—that is in the Longworth House Office Building and that may be record perfect.

[Whereupon, at 4:15 p.m., the subcommittee adjourned to reconvene at 10 a.m., Tuesday, July 26, 1977.]

¹³ Less and less workers are earning the maximum salary taxable under Social Security. (See tables 38 through 42.)

Note. All referenced Tables refer to Social Security Bulletin Annual Statistical Supplement 1974.

PRESIDENT CARTER'S SOCIAL SECURITY PROPOSALS

TUESDAY, JULY 26, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SOCIAL SECURITY,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room H-137, the Capitol, Hon. William R. Cotter, presiding.

Mr. COTTER. We will resume the hearings on the President's proposal for changes in the social security system.

Our first witness is a distinguished member of the Ways and Means Committee and a former member of the Social Security Subcommittee, the Honorable Philip Crane from Illinois.

Phil, if you will, proceed at your leisure.

STATEMENT OF HON. PHILIP M. CRANE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. CRANE. Thank you, Mr. Chairman. As a former member of the Social Security Subcommittee, it is an honor and a privilege for me to appear before you today.

If I may, I will attempt to summarize and ask unanimous consent that the full statement will be inserted in full in the record.

Mr. COTTER. Without objection.

Mr. CRANE. The first bill, H.R. 4419, to amend title II of the Social Security Act so as to liberalize the conditions governing eligibility of blind persons to receive disability benefits, has the same provisions as a bill introduced by the chairman of this subcommittee. This legislation would repeal the restriction on earned income presently imposed on blind recipients of social security disability benefits. Similar legislation has passed the Senate six times.

The law, as it presently stands, mandates an absolute denial of disability benefits as soon as a blind person meets the definition of substantial gainful activity. Thus, with an earned income of as little as \$200 a month, a blind recipient loses all of his disability insurance payments and medicare eligibility, if he has earned it. This \$200 a month is less than the earnings currently allowed aged recipients of social security without penalty. It may also be considerably less than the blind person is now drawing in disability benefits, as the family income from social security may exceed \$1,000 a month when dependents benefits are included.

Once the individual has demonstrated that his blindness does not prevent him from earning this meager \$200 a month, he becomes

permanently ineligible to receive disability benefits again, regardless of whether he loses his job or his income falls below that \$200 level. Faced with either the certainty of monthly disability income or the difficulty of seeking and finding employment at the risk of loss of benefits and net income, it is no wonder that approximately 70 percent of the employable blind population is either unemployed or underemployed.

It is unconscionable that we discourage these potentially productive members of society from contributing their talents and receiving due compensation. By effectively prohibiting the blind from seeking gainful employment, we have increased the chances that these people will end up on the rolls of public assistance programs. At a time when our national welfare rosters are swollen already, we must permit, even encourage, people to seek employment when they are able to do so. Counterproductive regulations, such as the one which, in effect, prevents the blind from earning a living, must be repealed in the interests of economy and simple justice.

I understand that there has been some concern as to the costs in additional benefits if this proposal were to be adopted. Aside from the value of the contributions that the working blind would make to our Nation by putting their talents and skills to use, they would provide additional revenues to the Treasury. Instead of merely collecting benefits, they would become taxpayers, rather than tax burdens. As their income increased, they would no longer need to rely on SSI and other welfare benefits, reducing the costs of these programs. Even were the increased revenues and reduced public assistance payments insufficient to offset the costs of added benefits, a system which encourages the blind to become self-supporting would certainly be better than the present, which dooms them to a lifetime of dependency.

The other bill I made reference to is the one that imposes restrictions on social security recipients for employment after they have reached retirement age. It seems to me this penalty is not only onerous, it is grossly unfair. The individual who can afford to clip coupons and live off of dividend income and earn any amount is eligible to maximum benefits but those, of course, who have to work on top of receiving benefits are injured.

There is one other point I would like to touch upon, if I may, Mr. Chairman, and that is my support for legislation to validate certain past social security coverage of policemen and firemen in positions covered by the Illinois municipal fund. Due to a good faith error, municipal police and fire chiefs in Illinois had been making contributions to social security even though they were ineligible to do so under Federal law.

The Social Security Administration has ordered a refund of these contributions back to 1969, an act which will considerably reduce the retirement income of police and fire chiefs in over 200 Illinois towns. This bill will validate their contributions prior to April 15, 1977.

These public servants made their contributions in good faith and with reliance on the State's interpretation of the law. Without this corrective legislation, they will be unfairly penalized for a mistake which will be none of their doing.

Mr. CORRER. I understand we will have testimony later this morning.

Mr. CRANE. Yes; you will, indeed, and I would appreciate the committee's serious consideration of that.

I think, Mr. Chairman, that summarizes the two pieces of legislation of which I have a specific concern with the addition of that remedy of what is an injustice with respect to the Illinois policemen and firemen.

Mr. COTTER. Thank you for your testimony.

I must say I agree with you and I know the chairman is very sympathetic.

Mr. CRANE. Thank you.

[The prepared statement follows:]

STATEMENT OF HON. PHILIP M. CRANE, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF ILLINOIS

Mr. Chairman, as a former Member of the Social Security Subcommittee, it is an honor and a privilege for me to appear before you today. While I am concerned over the soundness of the Social Security System and proposals to alter its methods of financing, I will limit my remarks today to legislation I have introduced repealing the earnings limitation for blind recipients and those aged 65 to 72.

The first bill, H.R. 4419, to amend title II of the Social Security Act so as to liberalize the conditions governing eligibility of blind persons to receive disability benefits, has the same provisions as a bill introduced by the Chairman of this Subcommittee. This legislation would repeal the restriction on earned income presently imposed on blind recipients of Social Security disability benefits. Similar legislation has passed the Senate six times.

The law, as it presently stands, mandates an absolute denial of disability benefits as soon as a blind person meets the definition of substantial gainful activity. Thus, with an earned income of as little as \$200 a month, a blind recipient loses all of his disability insurance payments and Medicare eligibility, if he has earned it. This \$200 a month is less than the earnings currently allowed aged recipients of Social Security without penalty. It may also be considerably less than the blind person is now drawing in disability benefits, as the family income from Social Security may exceed \$1,000 a month when dependents benefits are included. Once the individual has demonstrated that his blindness does not prevent him from earning this meager \$200 a month, he becomes permanently ineligible to receive disability benefits again, regardless of whether he loses his job or his income falls below that \$200 level. Faced with either the certainty of monthly disability income or the difficulty of seeking and finding employment at the risk of loss of benefits and net income, it is no wonder that approximately 70% of the employable blind population is either unemployed or underemployed.

It is unconscionable that we discourage these potentially productive members of society from contributing their talents and receiving due compensation. By effectively prohibiting the blind from seeking gainful employment, we have increased the chances that these people will end up on the rolls of public assistance programs. At a time when our national welfare rosters are swollen already, we must permit, even encourage, people to seek employment when they are able to do so. Counterproductive regulations, such as the one which, in effect, prevents the blind from earning a living, must be repealed in the interests of economy and simple justice.

I understand that there has been some concern as to the costs in additional benefits if this proposal were to be adopted. Aside from the value of the contributions that the working blind would make to our nation by putting their talents and skills to use, they would provide additional revenues to the Treasury. Instead of merely collecting benefits, they would be paying into the Social Security System. In addition, they would become taxpayers, rather than tax burdens. As their income increased, they would no longer need to rely on SSI and other welfare benefits, reducing the costs of these programs. Even were the increased revenues and reduced public assistance payments insufficient to offset the costs of added benefits, a system which encourages the blind to become self-supporting would certainly be better than the present one, which dooms them to a lifetime of dependency.

Consistent with my belief that we remove disincentives to employment from government benefit programs, I have also supported legislation to repeal the earnings limitation imposed on Social Security recipients aged 65 to 72. As the law now stands, any citizen in this age group who earns in excess of \$3,000, in addition to paying income and payroll taxes on the entire amount, forfeits \$1 in social security benefits for every \$2 he or she earns over and above the \$3,000 limit. The fact that this penalty is exacted against what amounts to a repayment of previous contributions seems to be of little consequence. Nor does it seem to matter that the senior citizen may find the financial going tough on a fixed income and would rather work than live in poverty. The present law encourages people to retire, even though they may be both able and eager to work, taking precedence over both fair play and individual need.

A look back to the turn of the century indicates what a profound impact the earnings limit has had. In 1890, for instance, 73.9 percent of all elderly males over 65 worked. In 1930, that figure was still as high as 58.3 percent but by 1970, it had dropped to 25 percent. However, social security benefits have hardly compensated for this loss of income; as of a year ago, the maximum benefit for a man retiring at age 65 was \$400 a month and the average benefit was only \$208 a month. As anyone who has gone to the store lately knows, \$208 a month is hardly adequate for anyone to live on.

Even those who administer and supervise social security admitted that it does not totally compensate for the income previously derived from working. As the 1965 Advisory Council on Social Security stated it:

The purpose of social security benefits is to furnish a partial replacement of earnings which are lost to a family because of death, disability, or retirement in old age.

Subsequent pronouncements by other advisory councils have made the same point; social security benefits are not, and never were intended to be, a match for earned income.

The rationale offered in defense of an earnings limit, or retirement test as it is frequently called, is that it will help those who need it the most—those who have retired and are no longer able to work. To do otherwise, so the logic goes, would "water down" the benefits to the extent that they would not be very helpful. However, if everyone has paid into the program over the years, why should some be penalized simply because they are industrious or healthy or both? Not even life insurance policies, which some people inaccurately like to compare to social security, are as discriminatory in their application. And, as if that were not enough, the very existence of a retirement test encourages employers to force employees to retire, and go on a fixed income, before they otherwise might. Perhaps the earnings limit would make more sense if this were not the case, but no one can deny the trend toward mandatory retirement at age 65 in recent years.

The earnings limit is insidious in that it keeps older people out of the work force even though they may have tremendous talent, energy, and experience to contribute. For the senior citizens locked into a fixed income by an earnings limit, there is little to look forward to other than inflation and the fact that they are being denied what is rightfully theirs. Given the number of senior citizens who by virtue of their fixed incomes and the ravages of inflation are in the poor or near poor category, such a policy makes no sense at all. If anything, we should make it possible for them, without compromising their dignity, to augment their incomes. The easiest way to do that is to let them work without penalty—if they choose.

Perhaps the most potent argument that can be raised against eliminating this earnings limit (as with the limit on blind recipients) is its cost—an estimated \$6 to \$7 billion in the first year alone. But as with the blind, we must take into account the fact that those senior citizens who decide to keep on working will be paying more income and social security taxes. Thus, the total amount paid into the Treasury and the Social Security system will increase as benefits paid out increase. Also, the savings of \$6 to \$7 billion a year is not, in itself, enough to justify the discrimination involved or to obviate the need for financially restructuring the social security system. All it really does is hurt a lot of the elderly who have worked hard all their lives, contributed to what they thought would be a decent retirement income, and are now being deprived of the opportunity to work and contribute further.

At a time when study after study is showing that keeping active and working often contributes to better physical and mental well-being in old age, continuation of the earnings limit would not only be anachronistic but unneces-

sarily cruel. Senior citizens should be able to augment their benefits if they do choose without penalty. To deny them the right to do so in order to benefit another group in society does not reflect well on the operation of social security. If anything, it suggests that we are promoting antisocial insecurity.

The earnings limit on the blind and aged recipients of Social Security benefits have effectively prevented these citizens from productive, useful activity that could allow them to supplement their incomes, and, therefore, become self-sufficient. In the interests of fairness and the desire for economy in government programs, we must remove these barriers.

Mr. Chairman, I appreciate the opportunity to present my views on this subject and thank the committee members for their time and consideration.

Mr. COTTER. Mr. Won Pat, we are delighted to have you here this morning. You may proceed at your leisure. If you would like to summarize and have your whole testimony as part of the record, without objection, it is so ordered.

STATEMENT OF HON. ANTONIO B. WON PAT, A DELEGATE IN CONGRESS FROM THE TERRITORY OF GUAM

Mr. WON PAT. Thank you, Mr. Chairman.

I will go accordingly, as you suggested.

As you know, I have sponsored a bill, H.R. 6460 concerning the Social Security Act and title XXI of the Internal Revenue Code of 1954 to provide social security coverage for both benefits and tax purposes with respect to wages paid certain nonimmigrant alien citizens of the Philippines while in Guam.

I have a statement here which I would introduce for the record and I would summarize it and then I would be most happy to answer any question that you may propound.

Mr. COTTER. Without objection, it is received.

Mr. WON PAT. Mr. Chairman, I appreciate this opportunity of appearing before you and your committee concerning my bill regarding a social security exemption for some alien workers on Guam. Let me give you a historical background.

Right after the war in 1945, the military brought in a lot of Filipino laborers in order to start reconstruction.

Thereafter more alien workers were brought in, for the private sector, to do rehabilitation work—construction and rehabilitation work. They are not required to pay social security. Neither the employers or the employees are paying into the system.

What is happening today is that we have a number of Korean construction companies over there and they have Korean workers. They are covered by social security. However, a treaty between the United States and Korea, ratification of which is now pending in the Senate, would exempt them also. So what is happening today is that we have construction companies from Hawaii and from the mainland that work locally and do have American citizens as employees and they are covered by social security. So, the difference there is very obvious. Costs of construction naturally would be higher for those construction companies which employ American citizens.

Mr. COTTER. How many people are affected by this, sir?

Mr. WON PAT. Presently we have over 5,000 alien workers over there. We feel that many of our local people as American citizens would not want to work in construction work, because the alien workers depress the local wages. That is a deterrent, of course, to local people, American

citizens wanting to go into the construction work. So, I feel we should change the present system and apply social security to those alien workers over there. One of the basic reasons behind the 1960 decision to apply it to them was that they are only there temporarily. But, look how many years we have them up to now. So, there is no reason to continue that system.

Mr. COTTER. It seems only fair.

Mr. WON PAT. I hope it is clear. If there are any questions you have, I will be happy to answer them.

Mr. COTTER. If there are any further questions, we will be in touch with you.

Thank you very much for appearing here this morning.

Mr. WON PAT. Thank you very much.

[The prepared statement follows:]

STATEMENT OF HON. ANTONIO B. WON PAT, DELEGATE IN CONGRESS FROM GUAM

Mr. Chairman, members of the subcommittee: I appreciate this opportunity to bring to your attention H.R. 6460, a bill introduced to benefit my district of Guam by establishing uniformity in social security coverage for all local workers.

In 1960, Congress amended the Social Security Act of 1954 to exclude from the social security system nonresidents alien workers from the Republic of the Philippines employed on Guam. To this day, several thousands of these workers are brought to Guam to work and are not required to contribute to the social security program. Nor are their employers required to pay contributions for these workers.

At that time the local labor force was much smaller than now and there were few trained workers, particularly in the building trades. Guam was just then beginning large-scale restoration from the effects of World War II, which had levelled almost every structure on the island, and major military construction programs were also underway. Thus many thousands of skilled workers were imported, principally from the Philippines.

In exempting these workers from social security programs, it was felt that inasmuch as they were only in the United States temporarily as contract workers and would not work in the United States long enough to become eligible for social security benefits, they should not be required to pay into the program.

Additionally, exemption from these taxes helped keep down construction costs in Guam which are always particularly high primarily due to transportation costs.

To my knowledge, this is the only such exemption to social security laws in the United States. We of Guam appreciate this special consideration which facilitated the restoration and development of our island. However, I am pleased to report the conditions which justified this unique exception no longer exist and the legislation I have introduced would repeal it and social security laws would then apply to all workers on Guam just as in the rest of our country.

Repeal is desirable for several reasons:

First of all, 17 years of experience has proven the expectations of 1960 did not come to pass. Although exact statistics are difficult to determine, in large part because there are not any social security records on these workers, it is clear that during these years many workers have worked in Guam sufficiently long to have qualified for retirement benefits and many more the minimum periods for survivor or disability benefits.

However, I can provide some representative statistics. Hawaiian Rock Corporation of Hawaii presently has 32 nonresident Filipino workers on Guam. Of these, 29 have worked on Guam for more than 26 quarters, two others have been there at least 20 quarters and one only 6 quarters.

The Black Construction Company of Guam now has 240 alien workers from the Philippines. Of these, all have worked in Guam at least 6 quarters, the minimum for social security survivor benefits, 210 of the total have worked in Guam at least 20 quarters and 54 have worked on Guam at least the 26 quarters needed to qualify for social security retirement.

These work histories are representative of the thousands of nonresident Filipino workers on Guam, past and present, and indicate conclusively that the

rationale behind the exemption, that workers would only be in Guam for short periods and then be repatriated to the Philippines, was logical, but greatly incorrect.

Also, during this period the labor force of Guam has more than doubled to a present level of more than 28,000, not including nonresident aliens of nearly 6,000.

However, much of the local work force is unskilled. Local workers are at a disadvantage in the job market for several reasons, one of which is that nonresident aliens are more attractive to employers because of lower wages paid plus the significant economic savings resulting from this social security exclusion.

In 1976, Guam's local labor unemployment rate topped 13 percent while more than 5,000 nonresidents were employed.

Repeal of this exemption would introduce equity between all jobseekers in regard to social security costs.

Thus, an exemption enacted for good reason in 1960 has outlived its usefulness and is now having adverse effects. My bill would remedy that.

I would also like to point out that this undesirable situation threatens to become much worse in the near future. As a result of the present exemption for Filipino workers on Guam a similar exemption for Korean workers on Guam is now pending in the Senate. Last year it was included in a United States-Korea tax agreement at the insistence of the Republic of Korea officials who cited the Philippines exemption. Ratification of that agreement would make Korean workers, of whom there are many hundreds on Guam, also more attractive to employers than U.S. workers.

Also, highly competitive Korean construction companies hire Korean workers almost exclusively. Exemption of these Korean workers from social security costs would provide the companies with important bidding advantages over U.S. firms with U.S. workers.

To give you a perspective on the scope of this potential problem, current Defense Department projects to repair damage from a 1976 typhoon total more than \$120 million and civilian restoration projects total even more.

However, the proposed social security exemption for Korean workers is structured so as to be dependent on continuation of the exemption H.R. 6460 would repeal. Thus, this bill would nullify the proposed exemption for Korean workers also. For social security purposes, all workers, U.S. and foreign, would be treated alike.

I am well aware this subcommittee is faced with much broader considerations concerning our social security system and appreciate being afforded this opportunity to bring this local problem to your attention during these hearings. As it has already been introduced as a separate bill and is non-controversial, I am hopeful you will also find it possible to act on it in the near future, separately for more far reaching social security legislation. H.R. 6460 would have little effect on the social security system but is very important in my district of Guam.

Thank you.

Mr. COTTER. Our next witness is from Hewitt Associates, Mr. Thomas H. Paine.

Mr. Paine, welcome to the committee. If you would like to summarize your statement, we will make it a part of the record or you may proceed verbatim, if you like.

STATEMENT OF THOMAS H. PAINE, HEWITT ASSOCIATES

Mr. PAINE. I would like to summarize my prepared remarks for perhaps 10 minutes.

My name is Thomas Paine. I am a partner in the firm of Hewitt Associates. We are consultants and actuaries on pensions and employee benefits. We help organizations design plans and make actuarial projections of their costs. We employ about 450 people and we serve about 2,000 organizations.

With our background in retirement planning, we have formed our own task force on social security, analyzed its problems, and developed a solution which we would like to share with you.

We urge the committee to adopt a long-range answer to social security's current problems, an answer that has certain characteristics.

First, we think we should keep the benefit levels adequate, sufficient to provide a reasonable standard of living after retirement for the worker who has no private pension or accumulated savings. We think the benefits should be predictable, replacing some predetermined portion of his working earnings. Escalator clauses work out either well or badly, for reasons beyond an individual's control, and until retirement they do not seem appropriate.

We think the benefits should be equitable, related to earnings on which contributions are made.

We think the financing system needs to be flexible, capable of delivering the benefits in times of inflation or recession, and in times when the demographics of the working force are favorable or unfavorable. We think the earnings-related benefits should be financed by payroll taxes, giving some assurance to workers that there will be funds available to provide their benefits. Considering that a 30-year-old contributor today may be receiving benefits in the year 2030, we suggest that only a long-range knowledge answer can give this security.

We believe we can develop a sensible long-term answer.

Conceptually, we think the best solution could involve a two-tier approach to social security.

First, a flat old-age benefit, payable to all persons past retirement age, and second, an earnings-related program that is no longer weighted for low earnings. The two together might provide benefits similar to, although somewhat higher than, those provided under the present law.

The earnings-related benefit, no longer burdened with high-income replacement needs at low-pay levels, could be related proportionately to average earnings in a person's highest 10 years of work, and they could be supported by equal contributions from employers and workers.

The old-age benefits would be paid by a combination of payroll taxes and general revenues.

The chart on page 13 in the paper indicates the kind of structure that we would suggest might be appropriate for a revised social insurance system. Let's look at each of these two pieces for a minute and look at their characteristics.

With respect to the old-age benefit, we see it as a payment to all persons attaining a certain age whether or not they have a previous work history. This is similar to the old-age benefit system that is in effect today in Canada. We see it covering all U.S. citizens whether or not they have a previous work history. Initially, we think the benefit level might be set at \$150 per month per person or \$1,800 per year. An elderly couple would then receive \$3,600 a year from the old-age benefit. This amount would be increased each January based on changes in an elderly person's consumer price index to be developed by the Bureau of Labor Statistics.

The earnings-related benefit would be related to covered earnings in the highest paid 40 quarters of coverage prior to retirement, financed equally by payroll taxes on employers and workers. We see

this covering all persons with qualifying wage records under OASDI, with similar provisions as in the present law—40 quarters required for retirement benefits and 6 quarters for disability or death benefits. We suggest a primary benefit formula of one-third of average covered wages during the highest 10 years of coverage, reduced proportionately if a person has been in covered employment less than 35 years. If people have pay increases during their last years of work in the neighborhood of 4 percent to 6 percent a year, this means the formula would provide somewhere around 25 percent to 27 percent of earnings in the last year of work. Again, once they commence these benefits would also be indexed to an elderly person's consumer price index.

This earnings related benefit would also contain disability and death benefits that correspond to what is provided under the present law. The present concept of covered wages would also be continued, and so would the contributions by employers and employees provided for in the present law.

With respect to the financing mechanism, we see the earnings-related benefit financed by payroll taxes alone, equally paid by worker and employer. This separate financing mechanism assures future stability in the system and eliminates concern among citizens about the future ability of the program to continue payments. For the payroll tax to be able to support the earnings-related benefit, there would have to be a shift at some future date of the cost of the medicare program from the payroll tax to general revenues.

The excess of contributions received by the payroll tax over the amount needed to pay those benefits and maintain appropriate reserves would be applied to meet the costs of the old-age benefit. Excess costs would be financed from general revenues.

As a rough estimate, the proposed earnings-related benefit can be financed at a cost of about three-quarters of the cost of the present OASDI program, assuming no future increases in pay replacement ratios.

That means that there would be some portion available to start paying for the old-age benefit.

What would this new structure accomplish? In summary, I think it might accomplish several things. First, initially the benefits under the proposed system are about equal to the present benefits levels.

Second, benefits would be decoupled, eliminating the movement toward higher pay replacement ratios and accompanying higher costs. Benefits will stay constant in the future as a percentage of final average earnings.

Third, benefits can be predicted. The worker has a good idea of how much of his pay the system will replace. He can also count on the future financial stability of the funds providing earnings-related benefits.

Fourth, the earnings-related benefit no longer includes nonworking spouse's benefits. This eliminates one form of inequity among contributors.

Fifth, it is no longer necessary for the formula for the earnings-related benefit to be weighted in favor of lower pay levels. This permits greater equity among contributors.

Sixth, the problem of disproportionate larger benefits for those in the system for only part of their careers is eliminated by a proportionate credit approach to computing benefits.

Seventh, benefits will remain adequate after commencement by being indexed to a special Consumer Price Index for retired workers.

Eight, weighting total benefits to assure adequacy for the lower income persons is continued but through the separate mechanism of the flat dollar old-age benefit. Initially, the total benefits provided by the proposed program would meet the requirements for a low budget for an elderly couple as measured by the BLS for a worker with final earnings of \$4,900. They would meet the intermediate budget for a worker with earnings of \$12,800, assuming, in both cases, there is a nonworking spouse eligible for the old-age benefit.

Ninth, the earnings-related benefit can be financed indefinitely by equal payroll taxes paid by employers and workers. The necessary tax rates are already included in the present law.

Tenth, general revenue financing is introduced, but it is specifically allocated to pay part of the cost of the old-age benefit. It seems more appropriate to use general revenues for that portion of the program which is designed to guarantee benefit adequacy than for the portion related to earnings.

Eleventh, flexibility in financing is introduced. The contributions to the earnings-related benefit that exceed the cost of that benefit are used to pay part of the costs of the old-age benefit. As demographic and economic factors change, the amount of this excess will vary.

We urge the committee to give consideration to this idea, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF THOMAS H. PAINE, HEWITT ASSOCIATES

7/77

INTRODUCTION

Various proposals have been made to remedy the financial problems facing the Social Security system. In 1976, the Congress charged the Hsiao Panel of Consultants with responsibility for recommending revisions in the Social Security benefit structure. After lengthy consideration of alternative benefit formulae, the team of actuaries and economists concluded that a modified benefit formula indexed to changes in prices would produce relatively level expenditures into the next decade. Robert Meyers, an acknowledged Social Security expert and its former Chief Actuary, has suggested a new dynamic benefit formula, based on wage-indexing, but adjusted to a 10% lower benefit level. Such diverse interest groups as the Democratic Study Group, the AFL-CIO, two national senior citizens groups, and the National Association of Manufacturers have concentrated on various means of "decoupling" the present system.

Recently, the Carter Administration advanced a comprehensive eight-part program for bringing Social Security income and outgo into balance. The Carter proposal represents a hybrid position, combining a number of alternative solutions. The program would decouple the present system, and at the same time, provide additional sources of revenue through a combination of increased payroll taxes, general revenues, and a shifting of funds between various segments of the Social Security trust funds.

To date, the various alternative proposals have concentrated on solving the short term problems facing the present system. Missing from each is consideration of the broad public policy issue of what should be the role of Social Security in providing retirement income. The purpose of this paper is to focus on this issue. The paper explores the major problems facing the current system, outlines the characteristics of a program that would correct those problems and meet society's needs, and presents specifications for such a program.

PROBLEMS IN THE CURRENT SYSTEM

In 1972, Congress enacted far-reaching changes in the Social Security system. Most important for the future were the provisions which automatically coupled benefit amounts to changes in the Consumer Price Index and coupled the maximum wage base to changes in average covered wages. Economic and demographic changes that were unforeseen when this current system was designed have caused several problems. It may be helpful to focus on each of these before considering an alternative plan.

Rising Benefit Levels

Originally, indexing had been supported by many persons because they felt that automatic adjustments would guarantee benefit adequacy without the necessity of amendments, and Congress would be discouraged from passing "ad hoc" benefit increases which exceeded the rise in the cost of living. Unfortunately, the actuarial assumptions used in estimating the effects of the 1972 Amendments were based on wage and price experience for the period 1950-1970. These assumptions soon proved to be unrealistic. Almost before it started rolling, the indexing system was subjected to a surge of high inflation combined with the deepest economic slump since the Depression of the 1930's.

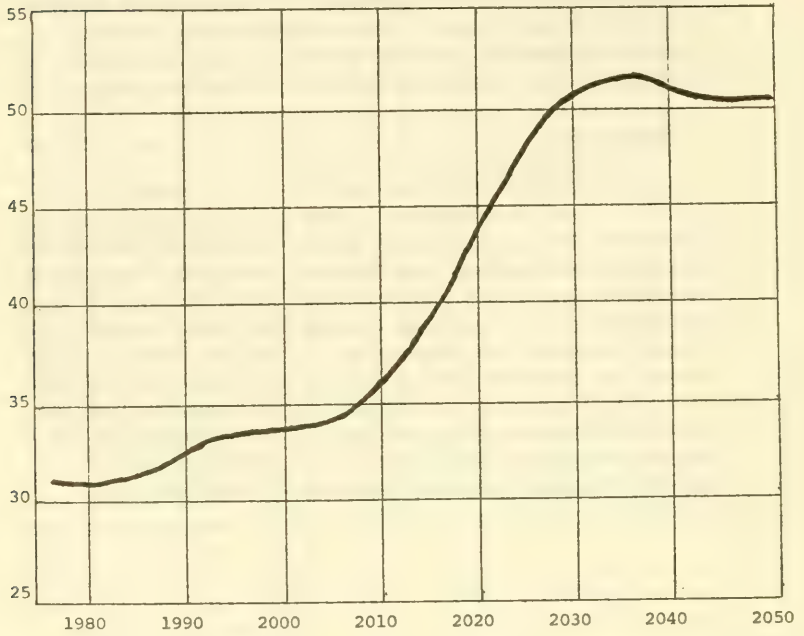
Under the automatic indexing provisions, the percentage increase in benefits triggered by a rise in the CPI applies not only to benefits in current-payment status, but also to the percentage components of the multi-step formula that determines the ultimate benefits of active employees. In addition, the ultimate benefits of active employees also rise with wage increases. The result is an instability in the replacement ratio -- the ratio that the benefit bears to the worker's taxable earnings in the

year prior to his retirement, death or disability. During periods when inflation is high and gains in earnings barely keep up with price increases, replacement ratios will drift upward. When gains in earnings are high and inflation is controlled, the replacement ratios will remain stable or even drift downward. Because of the economic changes we have experienced recently, the replacement ratio for the median wage earner has climbed from 38% in 1972 to 44% in 1976.

Rising Costs

Under the economic conditions expected in the future, the current automatic indexing will lead to higher benefit levels, which will impose a large cost burden on employees and employers. However, a more serious cost problem results from expected demographic changes. At the present time, there are about three workers covered under Social Security for every one beneficiary. Around the year 2010, this ratio will begin to change drastically, and by the year 2030 will be down to two workers for each beneficiary. The chart on the following page shows the change in the ratio from now to the year 2050. It was prepared by the Social Security Actuary based on reasonable assumptions of population growth and labor force participation rates.

OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM
PROJECTED BENEFICIARIES PER HUNDRED COVERED WORKERS
1976-2050



This change in the ratio of covered workers to beneficiaries will lead to a need for higher taxes. With fewer workers paying the costs, each must absorb a greater portion of the burden.

Social Security Administration actuaries have projected future expenditures under the current program as a percentage of covered compensation. The figures below show the total costs, and also break out the portion of the expenditure that is due to rising benefit levels (column (5)).

<u>Calendar Year</u>	<u>Expenditures</u>	<u>Tax Rate In Law</u>	<u>Excess of Expenditures Over Taxes</u>	<u>Portion of Excess Column (4) Attri- butable to Increase in Replacement Ratios</u>	<u>Tax Rate Needed If Current Replacement Ratios Are Maintained</u>
(1)	(2)	(3)	(4)	(5)	(6)
1977	10.91%	9.90%	1.01%	.00%	10.91%
1980	10.80	9.90	.90	-.03	10.80
1990	12.39	9.90	2.49	.20	12.19
2000	13.91	9.90	4.01	.97	12.94
2010	16.57	9.90	6.67	2.46	14.11
2020	21.64	11.90	9.74	4.54	17.10
2030	26.02	11.90	14.12	6.62	19.40
2040	26.67	11.90	14.77	7.76	18.91
2050	26.93	11.90	15.03	8.64	18.29

As the figures indicate, even if current benefit levels are maintained, tax rates would need to rise from the current 9.9% to 19.4% by 2030 because of the demographic changes. With such large increases necessary, much consideration has been given to the question of whether we can continue to finance the system with equal employee and employer payroll taxes. And, the problem is more complicated than merely providing one level of financing for the future and selecting the appropriate source of funds. Since changing proportions of active and retired workers affect the amount of contributions needed to support any given level of benefits, an effective solution must have flexibility to respond to demographic changes.

Loss of Public Support

One result of the publicity given to the problems of the current system is that people are beginning to lose faith in Social Security. Benefit levels cannot be predicted and future costs are unknown. People are afraid that they will pay taxes for years and then receive nothing at retirement. Some state and local governments have either dropped out or explored the possibility of dropping out of the system. Editorials have suggested that individuals could do better on their own or that companies could offer better private plans at a lower cost.

Studies have shown that the accusation that Social Security is not a "good deal" is not true. For most people, Social Security is a good buy -- even with rising taxes. However, what is most important is the public's perception of the system. Congress may look at financial problems that occur only after the year 2000 and dismiss them. Such a time horizon is well beyond the concern of current legislators. But, it is doubtful if workers in our society will feel secure unless there are answers which protect the system during their remaining lifetimes. If a person now age 30 will live to age 80, his concern stretches almost until the year 2030.

Inability to Fulfill Dual Roles

Many of the problems in the Social Security system are caused by the dual roles the program is trying to fulfill. The system is designed to provide benefits that are both socially adequate and individually equitable. The need for social adequacy is met by weighting the benefit formula heavily in favor of the low paid, by providing a spouse's benefit, and by granting "fully insured" status for death and disability benefits after only six quarters of coverage. The value of these benefits relative to the payroll taxes paid by the insured employee and his employer is much greater than the value received by many other workers.

The objective of offering individual equity is met with the wage-related benefit formula and the separate payroll tax system. There is an incremental benefit on higher pay so that those who make the greatest contribution receive the highest benefit. Also, Social Security does not require the means test of welfare programs. Those who pay taxes are guaranteed a benefit when they retire.

The problem that has arisen is that the current payroll tax structure cannot afford to support both parts of the system. As the benefits needed for social adequacy increase, taxes must increase. But, the regressive payroll tax is a poor vehicle for redistribution of income. Those who need the benefits most are burdened most heavily by the tax. On the other side, there is also difficulty in meeting the objective of individual equity. As higher taxes are needed to meet the costs of social adequacy, the incremental benefit received for paying the higher taxes must be decreased.

CHARACTERISTICS OF AN IMPROVED PROGRAM

Most of the alternatives that have been suggested for the Social Security system deal only with the problems facing us in the remainder of the twentieth century, or only with a portion of the total program. If we are to find effective long-term answers to all the problems, we must first consider the characteristics that the solution--or new program--must have in terms of both benefit design and financing mechanisms. Following are some suggestions.

A. Benefit Design Criteria1. Social Adequacy

The benefit level should be adequate to provide all necessities of post-retirement living for the worker covered by OASDI for most or all of his working career without supplementation by personal savings or significant private pension benefits. If the OASDI program fails to reach this level of adequacy, other forms of public assistance must operate concurrently. These other forms generally impose a means test to qualify, a requirement thoroughly inconsistent with the basic concept of the Social Security program.

This criterion assumes that private pensions are not going to spread to the entire work force. In the decade of the 1950's, rapid growth of private plans occurred, and by 1960 coverage was in effect for about half the workers in the private sector. Since then, progress has been much slower. It seems likely that tax incentives will continue the spread of private plans slowly, but coverage is probably going to fall far short of

being universal. And it is least likely to occur in industries where small employers predominate and wages are generally low. Therefore, Social Security must accept the responsibility of providing through OASDI the amount necessary to maintain necessities after retirement for the workers not covered by private pensions.

2. Individual Equity

The benefit formula must also maintain a degree of equity among covered workers. The individual who earns more and contributes more to OASDI during his career should receive a higher benefit than one who earns and contributes less. A corollary principle is that a worker should have his benefit based on the same earnings on which his contributions are determined.

3. Benefit Limits

OASDI should not provide benefits beyond some maximum. Some moderate level of pay is all that should be covered. The level might be set at the point where three-quarters of all wage earners have their full earnings subject to the system. To go beyond that point is to provide unnecessary coverage and to require an unnecessary allocation of federal funds.

4. Predictability of Benefits

The amount of benefits should be predictable so that it can be counted on by workers and employers sponsoring private pension plans. Since wage levels cannot be forecast in advance, OASDI benefits should be predictable not in dollar terms, but as a percentage of pay to be replaced in event of retirement, death or disability.

This need is not filled by indexing earned benefit credits to changes in prices or wages. In indexing, an element of unpredictability remains. The most appropriate criterion is average earnings of each worker in some period of years preceding receipt of benefits. This average earnings level would represent a reasonable definition of his or her living standard.

5. No Discrimination in Favor of Married Workers

The benefit formula should not discriminate in favor of workers who are married. The spouse's benefit, originally adopted when labor force participation among women was much less extensive than today, no longer seems appropriate in a society where the majority of women work. It may be appropriate for all persons past retirement age to have a payment to assure income adequacy. But it does not seem appropriate to have such a payment from an earnings related OASDI system of pay replacement.

B. Financing Criteria

1. Flexibility

The financing system should be flexible and capable of working permanently. As economic conditions and demographic characteristics change, the financing structure should be able to adjust to bring in the needed amount of funds to support current benefit requirements. At the same time, the system should maintain only a limited reserve. In fact, building a large reserve to obtain actuarial soundness would be detrimental to the economy by siphoning funds away from the private sector.

2. Separate Tax System for Wage-Related Benefits

The wage-related benefit should be supported by a separate tax system. Contributions should be based on earnings and should be paid equally by employers and workers. It is not necessary for the entire benefit to be wage-related and that portion which is not need not be financed by payroll taxes. But the benefit which is related to earnings should continue to have a separate financing base to assure workers that their future security is not threatened or subject to periodic legislative approval for allocating general revenues to the OASDI program.

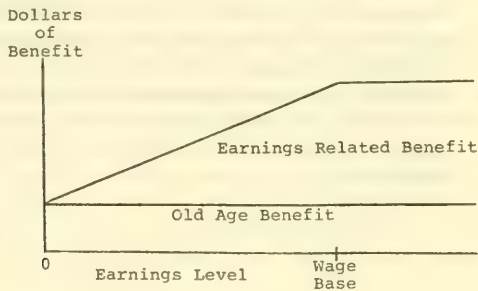
3. Universal Coverage

There should be universal coverage under OASDI. The present exemptions from required coverage for employees of certain nonprofit organizations should be eliminated. The permissible exemptions for employees of state and local governments should also be discontinued if there is no constitutional prohibition to required coverage. Employees of the federal government should be covered by OASDI and the benefits under their retirement plans should be integrated with the universal OASDI program. Attaining universal coverage will eliminate overlapping of benefits and unintended windfalls to persons who serve only part of their careers in OASDI covered employment.

SPECIFICATIONS FOR A PROPOSED STRUCTURE
FOR SOCIAL SECURITY

The preceding characteristics for a permanent solution to Social Security's problems suggest a revamped benefit and financing structure. Conceptually, the best solution might involve a two-tiered system composed of a flat Old Age Benefit payable to all persons past retirement age and an earnings-related OASDI program which is no longer weighted for low pay levels. The two together might provide benefits similar, although somewhat higher, than under present law. The earnings-related benefit, no longer burdened with high benefits at low pay levels, could be related proportionately to average earnings in the highest paid ten years of work and still be permanently supported by equal contributions from employers and workers. The Old Age Benefit would be paid for by a combination of payroll taxes and general revenues.

The following diagram represents how the structure would look for a single retiree. If there were also a nonworking spouse, there would be two Old Age Benefits paid instead of one.



Following is an outline of the principal features of this proposal, describing major benefit provisions and financing mechanisms.

A. Old Age Benefit

Concept - A payment to all persons upon attaining a specified age, whether or not there is a previous work history. Similar to the Old Age Benefit in Canada.

Effective Date - Applies to all persons retiring on or after January 1, 1978.

Coverage - All U.S. citizens, whether or not they have a previous work history.

Amount of Benefit - Initially \$150 per person per month. Payable monthly. To be increased in each January based on changes in Elderly Persons Consumer Price Index, an index to be prepared by the Bureau of Labor Statistics based on changes in prices for a market basket of goods typically purchased for an elderly couple.

Retirement Age - Full Old Age Benefit paid if payment commences at or after age 65. Reduced 1/15 per year if commencement occurs at age 62 to 64.

Tax Treatment - Benefit included in taxable income as received. Not subject to 50% ceiling on personal service income. After-tax value of benefit thus declines as amount of other taxable income rises.

Effect of Continued Earnings - No reduction in benefits made on account of earnings up to one-third of current wage base maximum. Thereafter, benefit reduced \$1 for each \$2 of earnings.

Benefits in Event of Death or Disability - None.

B. Earnings-Related Benefit

Concept - A benefit related to covered earnings in the highest paid 10 years prior to retirement, financed by equal payroll taxes on employers and workers.

Effective Date - Applies to all benefits that commence on or after January 1, 1978.

Coverage - All persons with qualifying wage records under OASDI. To be eligible for death and disability benefits, present requirements are continued, with as little as six quarters of current coverage required. For retirement benefits, permanent coverage of forty quarters of coverage required.

An attempt should be made to extend the system to cover groups of employees now excluded from OASDI, such as employees of Federal, State and local governments. If successful, problems of gaps in protection and overlapping of benefits will disappear. If some groups remain excluded, payment otherwise produced by the benefit formula to be multiplied by ratio of actual quarters of coverage to quarters of potential coverage, taking into account permissible dropout periods.

Primary Benefit Formula - $33\frac{1}{3}\%$ of average covered wages during highest reported 10 years of coverage, reduced proportionately for coverage of less than 35 years. For persons with increases in earnings during the last 10 years of work of 4% to 6% per annum, this formula will produce 25% to 27% of earnings during the last full year of work.

Benefits payable monthly. To be increased in each January based on changes in Elderly Persons Consumer Price Index.

Retirement Age - Full Primary Benefit paid if payment commences at or after age 65. Reduced 1/15 per year if commencement occurs at age 62 to 64.

Disability Benefit - Primary Benefit plus, until age 65, supplementary payment equal to amount of current Old Age Benefit. If eligible dependents, same allowances as under present program related to total monthly benefit being received by disabled worker.

Death Benefit - If over age 65 or under 65 with dependent children, spouse received 100% of worker's Primary Benefit. Each eligible child up to two receives same amount.

Covered Wages - All earnings up to wage base maximum, initially set at \$16,500 and increasing each January in accordance with changes in average reported earnings in the first quarter of the preceding year compared to first quarter of the year earlier.

Contributions - Equal taxes on earnings by employers and workers equal to the same percentages as contained in the present law, less the portion of that total allocated to Medicare program. For employer and worker, these percentages are:

<u>Year</u>	<u>% of Covered Wages</u>
1978-1980	6.05%
1981-1985	6.30
1986-2010	6.45
2011 and after	7.45

Tax Treatment - Same as under present law, i.e., employee contributions are not tax deductible when made, but employer contributions are. Benefits are received on tax-free basis.

Effect of Continued Earnings - No reduction in benefits made on amount of earnings up to one-third of current wage base maximum. Thereafter, benefit reduced \$1 for each \$2 of earnings.

C. Financing Mechanism

Concept - The earnings-related benefit should be financed by payroll taxes alone, equally paid by worker and employer. Such separate financing assures future stability of the system and eliminates concern among citizens about the future ability of the program to continue payments. For the payroll tax to be able to support the earnings-related benefit, there will need to be a shift at some future date of the cost for the Medicare program from the payroll tax to general revenues.

The excess of contributions received from the payroll tax over the amount needed to pay benefits and maintain appropriate reserves under the earnings-related program are to be applied to meet the costs of the Old Age Benefit with excess costs being financed from general revenues.

Earnings-Related Benefit - As a rough estimate, the proposed earnings-related benefit can be financed at a cost equal to three-fourths the cost of the present OASDI program, assuming no future increase in pay replacement rates. Based on the 1977 Report of the Social Security Actuary, Table 1 shows an estimate of the income and outgo from the OASDI fund, expressed as percentages of covered payroll.

Old Age Benefit - This benefit shall be paid from a Social Security fund separate from OASDI. Part of the contributions come from the excess of contributions to OASDI over the amount needed to pay earnings related benefits and maintain appropriate reserves. The balance of costs shall be paid from general revenues by means of Congressional appropriation.

TABLE 1
ROUGH ESTIMATE OF COST TO
FINANCE EARNINGS RELATED BENEFIT^{1]}

(1) <u>Year</u>	(2) <u>Present OASDI Program If Pay Replacement Constant</u> ^{2]}	(3) <u>New Earnings Related Benefit</u> ^{3]}	(4) <u>Payroll Tax In Present Law</u> ^{4]}	(5) <u>Excess Applied To Old Age Benefit</u> ^{5]}
1980	10.83%	8.12%	9.90%	1.78%
1990	12.19	9.14	9.90	.76
2000	12.94	9.71	9.90	.19
2010	14.11	10.58	12.90	2.32
2020	17.10	12.83	14.90	2.07
2030	19.40	14.55	14.90	.35
2040	18.91	14.18	14.90	.72
2050	18.29	13.72	14.90	1.18

^{1]} Expressed as percentages of covered payroll.

^{2]} From 1977 Report of Social Security Actuary.

^{3]} Estimated as 75% of Column (2).

^{4]} As provided for in present law. Through the year 2000, the present rate for OASDI is used. Starting in the year 2010, the combined tax rate for OASDI and Hospital Insurance is applied.

^{5]} Difference between Column (4) and (3).

WHAT THE PROPOSED SOCIAL SECURITY
STRUCTURE ACCOMPLISHES

1. Initially, benefits under the proposed system are about equal to present benefit levels. (See Table 2.)
2. Benefits are "decoupled," eliminating the movement toward higher pay replacement ratios and accompanying higher costs. Benefits will stay reasonably constant in the future as percentages of final average earnings.
3. Benefits can be predicted. The worker has a good idea of how much of his pay the system will replace. He can also count on the future financial stability of the fund providing earnings related benefits.
4. The earnings related benefit no longer includes non-working spouse's benefits. This change eliminates one form of inequity among contributors.
5. It is no longer necessary for the formula for the earnings related benefits to be weighted in favor of lower pay levels. This permits greater equity among contributors.
6. The problem of disproportionately larger benefits for those in the system for only part of their careers is eliminated by the proportionate credit approach to computing benefits.
7. Benefits will remain adequate after commencement by being indexed to a special CPI for retired workers.
8. Weighting total benefits to assure adequacy for lower income persons is continued, but through a separate mechanism of a flat dollar benefit. Initially, the total benefit provided

by the proposed program meets the requirements of the Low Budget for an Elderly Couple for a worker with final year's earnings of \$4,900 and the Intermediate Budget for a worker with earnings of \$12,800, assuming in both cases a non-working spouse also eligible for the Old Age Benefit.

9. The earnings related benefit can be financed indefinitely by equal payroll taxes paid by employers and workers. The necessary tax rates are those included in the present law.
10. General revenue financing is introduced, but it is specifically allocated to the Old Age Benefit. It seems more appropriate to use general revenues for that portion of the program which is designed to guarantee benefit adequacy than for the portion related to earnings.
11. Flexibility in financing is introduced. The contributions to the earnings related benefit that exceed the cost of that benefit are used to pay part of the costs for the Old Age Benefit. As demographic and economic factors change, the excess varies.
12. Benefits are reasonably predictable, simplifying the planning of private pensions and savings. Integration regulations governing how private plans coordinate with Social Security can be simplified and related to the amount of benefit received rather than to the presumed value of the entire program.
13. With pay replacement levels from Social Security held constant, the role of private pension plans will not be eliminated. Consideration should also be given to encouraging the use of Individual Retirement Accounts by liberalizing the requirements and increasing the allowable tax deduction.

TABLE 2

COMPARISON OF ANNUAL RETIREMENT BENEFIT LEVELS -
PRESENT vs. PROPOSED

Final Year's Annual Earnings	Worker Only				Worker and Spouse			
	Proposed Benefit			Total	Proposed Benefit			Total
	Present ¹ Benefit	Old Age Benefit	Earnings- Related ² Benefit		Present Benefit	Old Age Benefit	Earnings- Related Benefit	
\$ 6,000	\$3,330	\$1,800	\$1,620	\$3,420	\$4,995	\$3,600	\$1,620	\$5,220
7,200	3,743	1,800	1,944	3,744	5,615	3,600	1,944	5,544
8,400	4,156	1,800	2,268	4,068	6,234	3,600	2,268	5,868
9,600	4,427	1,800	2,592	4,392	6,641	3,600	2,592	6,192
10,800	4,698	1,800	2,916	4,716	7,047	3,600	2,916	6,516
12,000	4,969	1,800	3,240	5,040	7,454	3,600	3,240	6,840
13,200	5,083	1,800	3,564	5,364	7,624	3,600	3,564	7,164
14,400	5,185	1,800	3,888	5,688	7,778	3,600	3,888	7,488
15,600	5,244	1,800	4,212	6,012	7,866	3,600	4,212	7,812
16,800	5,244	1,800	4,455	6,255	7,866	3,600	4,455	8,055

¹ Payable in 1977.

² Assuming 4% annual pay increase in last ten years of coverage.

ROLE FOR PRIVATE PENSIONS

The revised Social Security structure described in this paper is designed to provide benefit levels that will cover the necessities of post-retirement living. About 50% of the workers in the country are not covered by private pension plans, and many of these people are lower paid workers who probably have little personal savings at retirement. The revised Social Security system can meet the basic needs of this group. However, since there is a limit on the earnings covered by Social Security, private pensions must still supplement benefits for middle income workers and play a major role in meeting the needs of the higher paid worker. Two issues that should be considered, therefore, are (1) how should private pensions tie in with Social Security; and (2) can we extend private pension coverage?

Issue 1: How should private pensions tie in with Social Security?

Under the proposed structure, Social Security benefits will be reasonably predictable and will meet the basic needs of retirees. However, since private plans will continue to supplement Social Security for the middle income worker and replace some portion of the pay not covered for the high income worker, policy should be legislated governing total retirement income. We suggest four criteria be considered in developing this policy which would be substituted for the existing integration rulings.

1. Total retirement incomes from public and private plans should not exceed some specified maximum.

Total retirement incomes that exceed some maximum level, such as 100% of pre-retirement gross pay, are not socially desirable. Benefits beyond such a level cannot be justified on the basis of need.

2. Total retirement income should not be greater for high paid employees than for low paid employees.

Combined benefits from the public and private plans should not provide a greater percentage of pre-retirement gross pay for the high paid worker than is provided for the low paid worker.

3. Private plans should be allowed to integrate with the total Social Security benefit.

If we set policy governing total retirement incomes, it is necessary that private plans be allowed to consider total public plan benefits. If only a portion of Social Security is considered, total retirement income could exceed the specified maximum when full Social Security is added to the private plan benefit.

4. Coordination of public and private benefits should be on the basis of benefits received.

Current integration regulations are based on the presumed value of Social Security. However, as Social Security benefits rise, the value changes, and the regulations are immediately obsolete. Coordination based on actual benefits paid from Social Security would simplify the process and assure the appropriateness of benefit level. Furthermore,

if we are to have a policy governing total income, it can be controlled only if the public and private systems are tied in on the basis of benefits.

Issue 2: Can we extend private pension coverage?

One objective of the Employee Retirement Income Security Act of 1974 was to extend private pension coverage to a greater proportion of the work force. One item aimed at meeting this objective was the provision allowing for the establishment of Individual Retirement Accounts, or IRA's.

IRA's can be established by any person who is not covered by a qualified pension or profit sharing plan offered by his or her employer. Low paid workers not covered by a private plan may find that the benefits provided by Social Security meet their needs. But, middle to higher income workers could be encouraged to supplement Social Security and meet their retirement income needs through the use of IRA's.

As we see it, three changes in the legislation and regulations governing IRA's should be considered to encourage their further use.

1. Increase the allowable tax deduction.

Currently, individuals can take a tax deduction of up to \$1,500 for contributions to an IRA. To encourage greater savings for retirement, to promote interest among more people, and to promote interest among more banks and other institutions that can offer IRA's, this limit should be raised. It may be appropriate at this time to raise the limit to \$7,500, the maximum deduction currently allowed for contributions to H.R. 10 or Keough plans. Also, the

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limit for both IRA's and H.R. 10 plans should be increased annually based on the same index used to raise the ERISA limits for qualified plans.

2. Allow employees to make up for years in which no contribution is made.

Many individuals may be ineligible to contribute to IRA's because they are covered by their employers' private plans. Yet, if they leave their employers before becoming vested, all accrued benefits are forfeited. These people should be allowed to make up for the lost benefits. The limits could be set in a manner similar to those governing tax sheltered annuities for persons at 501(c)(3) organizations, and contributions would also be subject to the ERISA limits.

3. Allow employers without qualified plans to make contributions to IRA's for their employees.

Many small employers may want to provide retirement benefits for their employees, but hesitate because of the administrative requirements. These employers should be allowed to make annual contributions to each employee's account based on a simple IRA contract with a bank or other institution. The provisions regulating these plans could be restrictive; contributions would be at the same rate as a percentage of earnings for all employees and within a certain range, vesting would be immediate, and provisions regarding withdrawal would remain as in the current law. To offset the lack of flexibility, companies would have few administrative requirements. The bank or other institution would handle all day-to-day administration such as benefit statements and retirements. The company would have no responsibility for terminated vested employees. No plan document would be required. And, only one annual report that included a trustee's statement would be needed to support the employer's tax deduction. A change of this type could encourage the spread of retirement plans to a significant portion of the work force now not covered.

Mr. COTTER. Thank you very much.

Do you have any projections over a period of time how much the wage base would go up or the tax rate itself?

Mr. PAINE. We have some cost figures on page 19, Mr. Chairman.

The second column shows the costs of the present program as calculated by the social security actuary if there is decoupling.

The third column is our estimate of the cost of this earnings-related benefit.

The fourth column is the payroll taxes provided for in the law today. The fifth column is the difference between columns three and four, which is the proportion of the payroll taxes that could be used to apply to pay for the cost of the old-age benefit.

The remainder of the costs of the old-age benefit would be paid from general revenues.

Mr. COTTER. Thank you very much. It is a very intriguing proposal. I think we can give it some study. I appreciate your coming.

Mr. Seiberling, it is nice to see you this morning, John. If you would like to summarize your statement, you may. You may proceed.

STATEMENT OF HON. JOHN SEIBERLING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. SEIBERLING. Yes; if you would put the whole statement in, I will try to hit the high spots.

Mr. Chairman, I am pleased to have the opportunity to testify before you today on the Social Security Rights Act. This bill, which 90 of our colleagues have cosponsored, would require that the Social Security Administration take the necessary steps to reduce its hearing backlog, and reduce its hearings processing time.

I know that the subcommittee is aware of the serious hearings backlog which continues to create inordinate delays in final decisions on appealed claims. In 1975, I testified before the subcommittee in support of a bill (H.R. 10727) to add hearings examiners to the Bureau of Hearings and Appeals in order to reduce the tremendous backlog of pending requests for hearings. At that time, there were 111,000 requests for hearings pending, and the median processing time was 224 days—over 7 months. To expedite the hearings process and reduce this backlog, Congress in December 1975 passed H.R. 10727 which SSA indicated would enable it to reduce the huge backlog of cases to approximately 80,000, and the median processing time to 90 days by July 1977.

Here we are in July 1977, and the latest available figures—May 30, 1977—show that 85,235 requests for hearings are pending before the Bureau. Although the backlog has been reduced from the 1975 peak, I think it is important to point out that this figure represents an increase of 3,643 pending cases since January 1977. The national average processing time for May was 211 days. While this is an improvement over January 1976, when the median processing time was an incredible 304 days, the Social Security Administration has obviously made very little progress in expediting hearings for appealed claims.

These statistics do not adequately express the plight of social security benefits claimants who are confused and frustrated with the lengthy processing time, and may use up all their savings and end up

on welfare while they wait for decisions on their claims. In the most extreme cases, when claimants are ineligible for other kinds of income assistance, they may be compelled to give up their homes.

I am sure you have heard appeals from constituents who need assistance from your office to expedite their claims, since the Social Security Administration is often unresponsive to an individual claimant's request for information on the status of their case. In the Cleveland Hearing Office, where my constituents' claims are heard, the average processing time exceeds the national average of 7 months.

Since you are from Connecticut, I think your problem has been somewhat solved by the U.S. District Court, District of Connecticut, in *White v. Mathews*. In this decision, issued October 20, 1976, the court ordered the Department of Health, Education, and Welfare to incrementally reduce hearing processing time in Connecticut to 120 days by July 1978. In ruling on this case, Chief Judge T. Emmet Clarie found that "lengthy and persistent delays" deny "due process rights to aggrieved applicants and conflicts with the statutory purposes and provision of the Social Security and Administrative Procedure Acts."

The court further ordered the HEW to "grant prospective payments to those claimants who fail to receive their final decision within the maximum delays" allowed by the decision. Judge Clarie's opinion was appealed to the second circuit court of appeals, which affirmed the lower court's opinion in a decision released just last week. In light of this decision, I believe that Congress must act soon to impose uniform Federal requirements for the processing of appealed claims. We certainly should not allow justice for social security claimants to depend on the basis of the Federal court jurisdiction in which they reside.

Mr. Chairman, I have a copy of the circuit court's opinion, and I would be glad to offer it for your hearing record. The most important parts of the decision are sections 1 and 3. If you care to have all of the decision, or just parts 1 and 3, I will be glad to give that to you.

Mr. COTTER. We will be glad to have it and without objection, it will be made a part of the record.

[The document follows:]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1127—September Term, 1976.

(Argued May 23, 1977

Decided July 18, 1977.)

Docket No. 77-6015

GEORGE WHITE, on behalf of himself and
all others similarly situated,

Plaintiff-Appellee,

—against—

DAVID MATHEWS, Secretary of the Department of Health,
Education and Welfare, as an individual and in his
official capacity,

Defendant-Appellant.

Before :

FEINBERG and DANAHER,* *Circuit Judges,*
and DOOLING, *District Judge.***

Appeal from judgment of United States District Court
for the District of Connecticut, T. Emmet Clarie, *J.*, hold-
ing that delays in administrative hearings on entitlement
to disability insurance benefits violated the Social Security
Act.

Judgment affirmed.

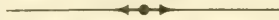
* Of the District of Columbia Circuit, sitting by designation.

** Of the Eastern District of New York, sitting by designation.

THOMAS W. STOUT, Attorney, Office of the General Counsel, Department of Health, Education, and Welfare, Baltimore, Maryland (Barbara Allen Babcock, Acting Assistant Attorney General, Peter C. Dorsey, United States Attorney for the District of Connecticut, Randolph W. Gaines, Chief of Litigation, Office of the General Counsel, Department of Health, Education, and Welfare, on the brief), *for Défendant-Appellant*.

RAYMOND RICHARD NORKO, Hartford, Connecticut (Legal Aid Society of Hartford County; Robert P. Wenten, Litchfield Hills Legal Services; Donna J. Brooks, Legal Aid Society of Hartford County, on the brief), *for Plaintiff-Appellee*.

PHILIP M. GASSEL, New York, N.Y. (Legal Services for the Elderly Poor, Toby Golick, Jane Greengold Stevens; John C. Gray, Brooklyn Legal Services, Corp. B, on the brief), *Amici in support of Plaintiff-Appellee*.



FEINBERG, *Circuit Judge*:

The Secretary of the Department of Health, Education and Welfare appeals from a successful challenge by plaintiff George White to the glacial pace at which the Social Security Administration (SSA) has adjudicated claims to disability payments. The United States District Court for the District of Connecticut, T. Emmet Clarie, *Chief Judge*, found the administrative delays in Connecticut unreasonable, and ordered reductions in those delays according to a schedule whose first stage would become effec-

tive July 1, 1977. Under the judgment of the district court, claimants forced to wait for a decision longer than the prescribed maximum periods are to be paid benefits until they are ruled ineligible. On appeal, the Secretary argues that the district court lacked subject matter jurisdiction, that the case is moot, and that in any event the delays should not be held unreasonable in view of extraordinary circumstances that aggravated the administrative burden and in view of Congressional reaction to the problem. We find none of these arguments persuasive and we affirm the order of the district court.

I

A brief description of the statutory scheme will be helpful in understanding the issues before us. The administrative process dealing with claims for disability insurance under Title II of the Social Security Act, 42 U.S.C. § 401 et seq., is quite complex, involving both state and federal agencies. As the Supreme Court explained in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), state agencies first determine "whether a disability exists, when it began, and when it ceased. . . . The standards applied and the procedures followed are prescribed by the Secretary . . . who has delegated his responsibilities and powers under the Act to the SSA." To establish disability and maintain his right to continued benefits, a wage earner must adduce "such medical and other evidence of the existence [of the disability] as the Secretary may require," 42 U.S.C. § 423 (d)(5), to prove that he cannot "engage in any substantial gainful activity." 42 U.S.C. § 423(d)(1)(A). This showing is necessary both upon initial application and at continuing-eligibility investigations. The latter periodic inquiries involve a physician and another person trained in disability evaluation, who rely on information obtained

from the wage earner himself and from his sources of medical treatment. The state agency may also arrange for an examination by an independent physician.

If the agency concludes, either initially or upon reexamination, that the claimant is not entitled to benefits, he is notified of this tentative conclusion and is given an opportunity to submit additional evidence. The state agency then makes its final determination, which the SSA Board of Disability Insurance reviews. An unsuccessful claimant can seek reconsideration by the state agency, whose decision is again subject to SSA review. A losing claimant is then entitled to a hearing before an administrative law judge, which entails a personal appearance and a full evidentiary proceeding. 42 U.S.C. § 405(b) (1970). Review of the administrative law judge's decision is available at the discretion of the Appeals Council of the SSA Hearings and Appeals Bureau. Thereafter, a claimant can obtain judicial review of an adverse determination under § 205(g) of the Act, 42 U.S.C. § 405(g).

This case only concerns delay at the administrative law judge hearing stage, and the facts regarding the claim of wage earner George White are undisputed. White filed an application for disability insurance benefits in the summer of 1972. He claimed to be totally disabled because of cirrhosis of the liver and acute pancreatitis, and he was awarded benefits beginning in January 1973. The agency reexamined White's case later that year, and after receiving a doctor's report, determined that White's disability had ceased in November 1973, and that he was last entitled to benefits for January 1974.

White requested reconsideration, but in early July 1974 he was told that the agency would not change its decision. On July 29, he requested a hearing before an administrative law judge. The hearing did not take place until April 29, 1975, and the administrative law judge issued his de-

cision (adverse to White) on May 21, 1975—about ten months after White's request for a hearing. Subsequently, the Appeals Council of the SSA reviewed the case, took some new evidence, and in December 1975 found that White's disability had not ended in November 1973, but had continued. In December 1975, the SSA reinstated White's benefits and paid him back benefits totalling more than \$3,000. At that point, White had not received benefits for almost two years.

In the meantime, however, White had taken further steps to obtain his benefits. In January 1975, while waiting for the hearing he had requested over five months earlier, White filed a class action in the district court, seeking declaratory and injunctive relief against the long hearing delays in Connecticut.¹ In March 1975, White moved for certification of the class, which Judge Clarie granted on July 18, 1975.² In the district court action, both White and the Secretary moved for summary judgment. The Secretary also moved to dismiss the complaint, arguing lack of jurisdiction and mootness. In a thorough opinion, Judge Clarie denied defendant's motions and granted summary judgment for plaintiff and his class.

The judge found that the average time between request for a hearing before an administrative law judge and entry of his final decision for the period of January 1973 through March 1975 was 211.8 days for residents of Connecticut, and 195.2 days nationally. Concluding that these delays were unreasonable and violated the Social Security

1 The situation in Connecticut was not atypical. See *Wright v. Mathews*, Civil No. 75-1537 (N.D. Ill. June 6, 1977); *Barnett v. Mathews*, Civil No. 74-270 (D. Vt. Feb. 22, 1977).

2 The class was certified as "all potential Social Security Disability recipients, who have pending petitions for a hearing before the Administrative Law Judge and have not had a hearing scheduled promptly and the matter concluded within a reasonable time."

Act, the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the due process clause, the judge ordered that maximum delays between request for a hearing and final decision by an administrative law judge be reduced to 180 days after July 1, 1977; to 150 days after December 31, 1977; and to 120 days after July 1, 1978. Claimants who are made to wait longer are to receive benefits automatically from the expiration of the allotted time period until a decision is rendered. The Secretary appeals, arguing that the court had no jurisdiction, that the action is moot, that class certification was improper and that the judge was wrong on the merits.

II

Jurisdiction

Judge Clarie found subject matter jurisdiction under 28 U.S.C. § 1361, which gives district courts "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." In *Frost v. Weinberger*, 515 F.2d 57 (2d Cir. 1975), cert. denied, 424 U.S. 958 (1976), we held that 28 U.S.C. § 1361 was a sufficient predicate for district court jurisdiction over an action to require the SSA to provide an evidentiary hearing before terminating survivors' benefits under the Act. The analogy to this case is clear, and recent Supreme Court cases seem to leave open the possibility that relief can be available here under § 1361. See *Norton v. Mathews*, 427 U.S. 524, 529-30 (1976); *Mathews v. Eldridge*, 424 U.S. 319, 322 n.12 (1976).

Appellant does not attempt to distinguish *Frost*, but argues that the Social Security Act itself precludes man-

damus review. Section 205(g), reproduced in the margin,³ allows a claimant to obtain judicial relief only after a final agency decision. And § 205(h) provides: "No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided." Appellant claims that this preclusion includes § 1361, because otherwise the requirement of § 205(g) for exhaustion of administrative remedies would be circumvented. Appellant cites *RoAne v. Mathews*, 538 F.2d 852 (9th Cir. 1976), as authority. But in that case, plaintiffs attempted to invoke § 1361 to gain premature judicial review of the question whether they qualified for social security benefits. This action, on the other hand, does not affect the merits of the underlying statutory issue—whether claimants in White's class are entitled to benefits—that will ultimately be subjected to the administrative process. Here, the district court was asked merely to require the agency to conduct its proceedings with reasonable speed. As will be seen below, the agency has a clear obligation under the statute to do so. The Secretary argues that mandamus is inappropriate because the timing of a hearing rests in his discretion. But the scope of the Secretary's discretion is the very issue before us, since we do not believe that he has discretion to deny a reasonable opportunity for a hearing. See Byse and Fiocca, Section 1361

3 Section 205(g) provides, in pertinent part:

Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia.

of the Mandamus and Venue Act of 1962 and "Nonstatutory" Judicial Review of Federal Administrative Action, 81 Harv. L. Rev. 308, 354 (1967). Under these circumstances, we follow *Frost* and hold that the district court properly predicated jurisdiction on § 1361.⁴ This conclusion leaves § 205(g) undisturbed as the exclusive avenue to the courts for a claimant seeking to challenge the merits of an SSA denial of benefits under the Act. See *Califano v. Sanders*, 45 U.S.L.W. 4209 (Feb. 23, 1977); *Weinberger v. Salfi*, 422 U.S. 749 (1975).

Mootness

Appellant argues to us, as he did below, that this case became moot when White received his hearing and decision from the administrative law judge. The complaint sought only declaratory relief and a mandatory injunction to compel the scheduling of a hearing. White's hearing before an administrative law judge in April 1975 thus ended his individual controversy with the SSA over the issue in this case. In appellant's view, that barred continuation of this action, despite the fact that White filed it as a class action. Judge Clarie did not certify the class until July 18, 1975, almost three months after the hearing before the administrative law judge. The argument is that White's case became moot before the class was certified, and "if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974).

4 This conclusion makes it unnecessary for us to consider the alternative grounds of jurisdiction advanced by White, namely, 28 U.S.C. § 1331 and 42 U.S.C. § 405(g). In light of *Califano v. Sanders*, 45 U.S.L.W. 4209 (Feb. 23, 1977), White abandoned in this court his jurisdictional argument based on the Administrative Procedure Act.

There is, however, no question that White had alleged a substantial controversy when he filed suit in January 1975, and nothing had changed his position when he moved for class certification in March of that year. The existence of a controversy at that point was sufficient, on the facts of this case, to enable this suit to proceed as a class action. In *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975), the Supreme Court acknowledged the possibility that special allowance may at times be necessary for claims that evaporate as the suit unfolds:

There may be cases in which the controversy involving the named plaintiffs is such that it becomes moot as to them before the district court can reasonably be expected to rule on a certification motion. In such instances, whether the certification can be said to "relate back" to the filing of the complaint may depend upon the circumstances of the particular case and especially the reality of the claim that otherwise the issue would evade review.

The question is whether to allow class certification in this case to relate back at least to March 1975, when White moved to certify the class and still had not received a hearing before an administrative law judge. Refusing to do so would mean that the SSA could avoid judicial scrutiny of its procedures by the simple expedient of granting hearings to plaintiffs who seek, but have not yet obtained, class certification. Cf. *Workman v. Mitchell*, 502 F.2d 1201, 1208 (9th Cir. 1974); *Lamont v. Postmaster General of the United States*, 229 F. Supp. 913 (S.D.N.Y. 1964) (3-judge court) (dissenting opinion), rev'd, 381 U.S. 301 (1965). We do not suggest that this occurred here, but we must take notice of the "reality" of that possibility in the future. Moreover, the key issue here—whether SSA's hearings are unreasonably delayed—is a live one still for members

of the class. The court was fully apprised of the broad nature of the controversy well before White received his hearing before the administrative law judge. If Judge Clarie had been concerned about mootness he obviously could have ruled on the class certification motion more quickly. See *Frost v. Weinberger*, supra, 515 F.2d at 64. But a district court should have enough time to consider these important issues of class status carefully, particularly when no purpose would be served by rushing a ruling. The main reason for requiring that the named plaintiff have a "live" controversy is to assure adequate representation of the interests of the class. *Id.* Counsel for the class here has argued energetically and capably throughout, as the outcome below bears out. There is no reason to keep these efforts on behalf of the class in check until the SSA delays so long that it not only provokes a suit but also allows time for a carefully considered ruling on the class issue. Under all the circumstances, we do not think the case is moot.⁵

Class Certification

Appellant's last preliminary challenge is directed at the certification of the class. First, he argues, White was not a member of the class when it was certified, but as we have just explained, certification can relate back so this case escapes the pitfall of *O'Shea v. Littleton*, supra.

5 Judge Clarie's opinion mentions two "named intervenors": Alice Lockwood, who waited over a year between her hearing request and the administrative law judge's final decision, which came in October 1975; and Helen Caldwell, who waited six months for a hearing and ruling on her appeal from denial of disability status after she underwent surgery for lung cancer. From the record, it is unclear whether their motions to intervene were ever actually granted, or when that occurred. We note that if Lockwood's motion to intervene was granted before the hearing and decision by the administrative law judge on White's claim, the action was clearly not mooted before certification of the class in July 1975.

Also, we are urged, the plaintiffs' claims lack the uniformity of legal and factual issues that is necessary before a case can come within F. R. Civ. P. 23(a)(2). However, plaintiffs all seek social security disability benefits through the identical administrative process, all have requested hearings after initial adverse rulings, and all have endured long delays before hearing. Judge Clarie correctly concluded that these common elements justified class certification.

III

We turn now to the merits of the controversy before us. On the record before him, Judge Clarie ruled:

[T]he lengthy and persistent delays experienced in the Title II disability appeals system in Connecticut averaging 211.8 days between January 1973 and March 1975 . . . are unreasonable. Such delay denies due process rights to aggrieved applicants and conflicts with the statutory purposes and provisions of the Social Security and Administrative Procedure Acts. These acts require that the Agency act with reasonable dispatch.

There seems to be no quarrel with the judge's finding of the average length of delay. Appellant argues instead that the delays did not violate the statutes cited above or the Constitution, that the district court should have deferred to administrative and congressional efforts to remedy the problem of hearing delay and that, in any event, the court should not have granted prospective payments.

Section 205(b) of the Social Security Act, 42 U.S.C. § 405(b), instructs the Secretary to make "decisions as to the rights of any individual applying for a payment" of

benefits. Thereafter, upon request of a claimant, the Secretary is directed to provide him with "reasonable notice and an opportunity for a hearing" with respect to the decision complained of.⁶ We read this as giving the claimant a right to a hearing within a reasonable time and we do not understand the Secretary to dispute this construction. Although what is reasonable depends upon a variety of circumstances, that statutory command should not be ignored. The disability insurance program is designed to alleviate the immediate and often severe hardships that result from a wage-earner's disability. In that context, delays of the better part of a year in merely affording an evidentiary hearing detract seriously from the effectiveness of the program. Perhaps this unfortunate impact might be diminished to a tolerable level if a high percentage of claimants seeking hearings before an administrative law judge were not actually entitled to benefits. But such hearings have led to reversals in more than half the cases heard.⁷

6 Section 205(b) reads, in pertinent part:

The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision.

7 House Comm. on Ways and Means, Committee Staff Report on the Disability Insurance Program (July 1974) at 1. In *Mathews v. Eldridge*, 424 U.S. 319, 346 n.29 (1976), the Court focused on the statistical universe of all denials of benefits, not just the ones that are appealed, because that case concerned the overall fairness of the entire procedural system. In our case, the high rate of success for claimants pursuing appeals is meaningful as an indication that a large number of the victims of administrative delay actually are disabled and entitled to benefits.

The Supreme Court noted in *Mathews v. Eldridge*, 424 U.S. 319, 342 (1976), that "[i]n view of the torpidity of this administrative review process, . . . and the typically modest resources of the family unit of the physically disabled worker, the hardship imposed upon the erroneously terminated disability recipient may be significant." True, the Court ruled that this hardship did not constitutionally compel a hearing prior to termination because, among other things, of the potential sources of temporary income for the claimant and the exigencies of budget and personnel. But the absence of pre-termination hearings makes it all the more important to expedite adjudication of claims of erroneous termination.

As against this, the Secretary points to the serious problems with which the SSA has had to cope. A flood of claims for benefits followed passage of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 901 et seq., and Title XVI of the Social Security Act, 42 U.S.C. § 1381 et seq., which provided supplemental security income (SSI) for the aged. Legislative obstacles prevented efficient deployment of three distinct corps of hearing officers, who were separately handling Title II cases, black lung cases, and SSI cases, to dispose of the backlog involved here. And increasing the hearing staff was difficult because other civil service hearing examiner positions were paid more.

Judge Clarie took note of these problems, and recognized that the SSA had, commendably, tried to overcome them. The SSA has increased support personnel and equipment, hired staff attorneys, and screened cases to identify candidates for favorable action without any need for a hearing. Nevertheless, Judge Clarie found that the SSA was not justified in forcing claimants to endure so many months of delay while they went without benefits.

For claimants like White who eventually win reinstatement of benefits after an administrative cut-off, the question truly is, as Judge Clarie found:

not whether there shall be costs incurred, but who shall bear them while the governmental machinery responsible for providing appeals puts itself in order. When the government does not act with reasonable promptness, those claiming total disability are required to bear an unreasonable delay and suffer unwarranted deprivation of that which is lawfully theirs.

Cf. NLRB v. Rutter-Rex Mfg. Co., 396 U.S. 258, 263-64 (1969).⁸ Like the district judge, we are sympathetic to the administrative problems that beset the SSA, but we do not believe that these difficulties establish that claimants in White's class have been given a "reasonable . . . opportunity for a hearing."

The Secretary also relies on recent legislative history to support his contention that the SSA hearing delays do not violate the Act. We are told that Congress rejected the idea of imposing precise time limits on the SSA, preferring not to sacrifice quality of hearing in the name of speed; and that Congress has recently found that in light of the special problems plaguing the SSA, no unreasonable delay existed. Appellant refers to the special investigation conducted by the House of Representatives Subcommittee on Social Security in the fall of 1975. In the wake of that study's full explication of the delay problem and its causes, Congress authorized HEW to employ its hear-

8 In that case, a similar concern for the financial plight of statutorily protected workers led the Supreme Court to disallow the reduction of back pay awards because of slow NLRB disposition of the case. The Court had to balance countervailing interests of the innocent wage earner and the party harmed by the delay; here, the claimants are both innocent and hurt by the delay.

ing examiners more effectively, but imposed no specific time limits for disability hearings.⁹ Instead, appellant insists, Congress left the scheduling of the hearing entirely up to the agency's discretion.

We do not believe that this legislative history changes the meaning of § 205(b). Congress did not abandon the requirement of reasonableness, and the decision not to impose precise limits should not be interpreted as an endorsement of the delays. SSA Commissioner James B. Cardwell had represented to Congress that by June 1977 hearing delays would not exceed 90 days.¹⁰ The district

9 Pub. L. No. 94-202, 89 Stat. 1135 (1976).

10 Following his appearance before the subcommittee, Cardwell was asked to respond in writing to a number of specific questions from the subcommittee. Regarding the hearing delays, the question and answer were as follows:

You stated on page 10 of your prepared statement that you are going to have a goal of a 90-day waiting period for a hearing but then you emphasized the difficulty of the procedures where medical examinations may be necessary and medical and vocational experts used.

In view of the present backlog and the nature of the hearing process, what is your best estimate of *when* this goal will be met? How many additional ALJ's will be required to meet this goal? Is this goal realistic?

By June 1976, we expect to be able to process the title XVI cases being heard by SSI hearing examiners within 90 days of receipt of the request for hearing. With respect to the cases which are now being handled by ALJs (e.g., title II, concurrent title XVI and title II, title XVIII, etc.), we hope to be able to reach our goal by June 1977, of issuing the hearing decision within 90 days of the request for hearing. In order to reach this goal we must eliminate the current backlog and to do this we will need to have flexibility in using the current hearing manpower available. Authorization will be needed for all hearing officers to hear cases under titles II, XVI, and XVIII. Once the backlog is eliminated, we will be able to handle anticipated receipts with the budgeted 675 presiding officers.

The 90-day processing goal is, in our opinion, realistic.

Delays in Social Security Appeals: Hearings before the Subcomm. on Social Security of the House Comm. on Ways and Means, 94th Cong., 1st Sess. 74 (1975).

court's imposition of a time schedule that allowed the SSA from 90 to 30 days longer than its own projection is hardly at odds with the expectations of Congress.

Appellant also argues that, in any event, the district court acted improperly in ordering the prospective payments to claimants who endure delays longer than the schedule allows. We are told that Congress authorized prospective payments only in a narrow category of cases which does not include this situation. See 42 U.S.C. § 405 (q). But the absence of a specific congressional provision does not bar the federal court's exercise of its remedial power when it finds that the Secretary has violated the statute. In providing for disability benefits, Congress intended to give a disabled worker a ready source of support, financed in part by a tax in the past on his own earnings. The statute was intended to make it unnecessary for an eligible worker to resort to the sometimes demeaning procedure of asking for local relief,¹¹ as plaintiff White was compelled to do here. Judge Clarie's order is a laudible effort to carry out this Congressional purpose in the difficult circumstances of this case. According to his prescribed schedule, the initial 180-day period did not begin to run until July 1977, which left the SSA more than a year after entry of the order in which to reduce the delays. The order was not given retroactive effect,

11 The Senate Finance Committee minority report, supporting H.R. 7225 (which Congress ultimately passed to create the disability insurance program), said:

Under a sound social-insurance program, Americans should be protected against the fundamental hazards which would otherwise destroy their earning power and reduce them to beggary. Granted that some form of income is necessary to provide for those who are unable to provide for themselves, it is far preferable that these persons should remain proud, self-sufficient Americans rather than become hat-in-hand pleaders for public charity.

1956 U.S. Cong. Code & Admin. News 3942.

and it allowed exceptions for cases in which the claimant causes the delay, or where the administrative law judge determines that additional medical evidence must be gathered. Moreover, payments under the order are to cease if the administrative law judge rules against the claimant, in which case the SSA is entitled to full recoupment for interim amounts paid in the meantime. We find no error in this equitable solution to the difficult problem of balancing administrative difficulties and wage earners' needs. *Cf. Nader v. FCC*, 520 F.2d 182, 205-07 (D.C. Cir. 1975); *Deering Milliken, Inc. v. Johnston*, 295 F.2d 856 (4th Cir. 1961); *Phillips v. Dawson*, 393 F. Supp. 360 (W.D. Ky. 1975). At the same time, we emphasize that Congress can always assert its power to give the district courts more specific direction. But nothing so far seems to rule out the time limits imposed here.

Appellant also argues that prospective payments cannot issue because 42 U.S.C. § 405(i) allows actual payments only upon a "final decision of the Secretary or upon final judgment of any court . . . that any person is entitled to" the payments. This section is plainly directed at the ordinary situation in which payments become due after favorable administrative adjudication, or judicial review under § 405(g). We do not read § 405(i) as excluding the possibility of interim payments ordered by a court exercising its remedial power.

The judgment of the district court is affirmed.¹²

¹² In view of our holding, we need not decide whether the delays also violated the Administrative Procedure Act or the due process clause.

Mr. SEIBERLING. The district court's finding for reasonable action by SSA is consistent with section 3 of the Social Security Rights Act, which would place a limit of 120 days on the amount of time SSA can spend in processing social security benefits claims at the hearing level. This legislation would give claimants the right to request and to receive emergency payments within 10 days, based on their earnings records, if they have not received notification of decisions on their claims within 120 days, or if their claims have been approved but their benefit payments delayed. The Social Security Rights Act would also require that initial and reconsideration decisions be made within 90 days, and provide for the expedited replacement of lost, stolen, or undelivered checks.

The Social Security Rights Act gives Congress the opportunity to clarify its intent by requiring the Social Security Administration to provide timely benefits to needy claimants against the loss of earnings in the event of retirement, death, or disability. The time limits set forth in the Social Security Rights Act are entirely reasonable. They are based on the average processing times SSA experienced in the late sixties before additional program responsibilities and increased claim submissions adversely affected SSA's processing ability and they give SSA an additional 30 days leeway.

The idea of setting time limits for processing Government benefit claims is not new. It has worked well under the food stamp program where applications for benefits must be reviewed and decided within 30 days, and in the aid to families with dependent children program where the limit is 45 days. More recently, pursuant to title II of the Social Security Act, which requires that States administer unemployment insurance programs in such a way "to insure full payment of unemployment compensation when due," the Labor Department issued regulations requiring claims to be paid within 15 days.

If time limits are appropriate and workable for these programs, how can we not justify similar rights for needy social security claimants? Census Bureau statistics show that approximately 25 percent of families with incomes below the poverty level are social security recipients. Most claimants have contributed regularly with every paycheck to their social insurance and they deserve to have their cases promptly considered.

Social security programs reach almost all Americans at some point in their lives. The SSA disability and appeals systems have been in deep trouble for many years, and Congress can no longer ignore its responsibility for this situation. We must act to resolve it by setting fair and reasonable standards for SSA claim processing and by providing SSA with any additional personnel and resources they may require to meet these standards. Enactment of the Social Security Rights Act would insure the achievement of the purpose of social security programs—to provide insurance against loss of earnings in the event of retirement, death, or disability.

I will be glad to answer any further questions, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. JOHN F. SEIBERLING, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF OHIO

Mr. Chairman, I am pleased to have the opportunity to testify before you today on the Social Security Rights Act. This bill, which 90 of our colleagues have cosponsored, would require that the Social Security Administration take the

necessary steps to reduce its hearing backlog, and reduce its hearings processing time.

I know that the Subcommittee is aware of the serious hearings backlog which continues to operate inordinate delays in final decisions on appealed claims. In 1975, I testified before the Subcommittee in support of a bill (H.R. 10727) to add hearings examiners to the Bureau of Hearings and Appeals in order to reduce the tremendous backlog of pending requests for hearings. At that time, there were 111,000 requests for hearings pending, and the median processing time was 224 days—over seven months. To expedite the hearings process and reduce this backlog, Congress in December, 1975 passed HR 10727, which SSA indicated would enable it to reduce the huge backlog of cases to approximately 80,000, and the median processing time to 90 days by July, 1977.

It is now July, 1977, and the latest available figures (May 30, 1977) show that 85,235 requests for hearings are pending before the Bureau. Although the backlog has been reduced from the 1975 peak, I think its important to point out that this figure represents an increase of 3643 pending cases since January, 1977. The national average processing time for May was 211 days. While this is an improvement over January, 1976 when the median processing time was an incredible 304 days, the Social Security Administration has obviously made very little progress in expediting hearings for appealed claims.

These statistics do not adequately express the plight of social security benefits claimants who are confused and frustrated with the lengthy processing time, and may use up all their savings and end up on welfare while they wait for decisions on their claims. In the most extreme cases, when claimants are ineligible for other kinds of income assistance, they may be compelled to give up their homes.

I'm sure you have all heard appeals from constituents who need assistance from your office to expedite their claims, since the Social Security Administration is often unresponsive to an individual claimant's request for information on the status of their case. In the Cleveland Hearing Office, where my constituents claims are heard, the average processing time exceeds the national average of seven months. One of my constituents applied for a hearing date in October, 1976. After being rescheduled several months later, he obtained a hearing on April 20, 1977. His case remains undecided as of this date, and he may well wait over 10 months from the date of his application for appeal to find out if he is eligible for disability insurance benefits. Although cases such as this have become less frequent in recent years, processing delays continue to bring uncertainty and financial hardship to claimants who must wait months for a final decision on their eligibility for disability insurance benefits.

On October 20, 1976, the U.S. District Court, District of Connecticut, in *White v. Mathews* ordered the Department of Health, Education and Welfare to incrementally reduce hearing processing time in Connecticut to 120 days by July, 1978. In ruling on this case, Chief Judge T. Emmet Clarie found that "lengthy and persistent delays" deny "due process rights to aggrieved applicants and conflicts with the statutory purposes and provisions of the Social Security and Administrative Procedure Acts."

The Court further ordered that HEW "grant prospective payments to those claimants who fail to receive their final decision within the maximum delays" allowed by the decision. Judge Clarie's opinion was appealed to the 2nd Circuit Court of Appeals, which affirmed the lower court's opinion in a decision released just last week. In light of this decision, I believe that Congress must act soon to impose uniform federal requirements for the processing of appealed claims. We certainly cannot allow piecemeal justice for social security claimants on the basis of the jurisdiction in which they reside.

The District Court's finding for reasonable action by SSA is consistent with Section 3 of the Social Security Rights Act, which would place a limit of 120 days on the amount of time SSA can spend in processing social security benefits claims at the hearing level. This legislation would give claimants the right to request and to receive emergency payments within 10 days, based on their earnings records, if they have not received notification of decisions on their claims within 120 days, or if their claims have been approved but their benefit payments delayed. The Social Security Rights Act would also require that initial and reconsideration decisions be made within 90 days, and provide for the expedited replacement of lost, stolen or undelivered checks.

The Social Security Rights Act gives Congress the opportunity to clarify its intent by requiring the Social Security Administration to provide timely benefits

to needy claimants against the loss of earnings in the event of retirement, death or disability. The time limits set forth in the Social Security Rights Act are entirely reasonable. They are based on the average processing times SSA experienced in the late sixties before additional program responsibilities and increased claim submissions adversely affected SSA's processing ability and they give SSA an additional 30 days leeway.

The idea of setting time limits for processing government benefit claims is not new. It has worked well under the Food Stamp program where applications for benefits must be reviewed and decided within 30 days, and in the Aid to Families with Dependent Children program where the limit is 45 days. More recently, pursuant to Title II of the Social Security Act, which requires that states administer unemployment insurance programs in such a way "to insure full payment of unemployment compensation when due," the Labor Department issued regulations requiring claims to be paid within 15 days.

If time limits are appropriate and workable for these programs, how can we not justify similar rights for needy social security claimants? Census Bureau statistics show that approximately 25 percent of families with incomes below the poverty level are social security recipients. Most claimants have contributed regularly with every paycheck to their social insurance and they deserve to have their cases promptly considered.

Social Security programs reach almost all Americans at some point in their lives. The SSA disability and appeals systems have been in deep trouble for many years, and Congress can no longer ignore its responsibility for this situation. We must act to resolve it by setting fair and reasonable standards for SSA claim processing and by providing SSA with any additional personnel and resources they may require to meet these standards. Enactment of the Social Security Rights Act would insure the achievement of the purpose of social security programs—to provide insurance against loss of earnings in the event of retirement, death or disability.

Mr. COTTER. Thank you very much, John. I could not agree with you more and I know Chairman Burke has expressed concern over this very situation. I hope that before long we can take corrective steps.

Mr. SEIBERLING. I am glad the judges in Connecticut are leading the parade.

Mr. COTTER. Yes; I am intimately familiar with it.

Thank you for appearing.

We will recess for about 5 minutes.

[Brief recess.]

Mr. COTTER. Our next witness will be Chief Case of the Illinois Association of Chiefs of Police.

Chief, if you would like to take the witness table, you may proceed.

If you would prefer to summarize, your whole statement will be made a part of the record. If not, you may proceed as you like.

STATEMENT OF LEWIS R. CASE, MEMBER, EXECUTIVE BOARD, ILLINOIS ASSOCIATION OF CHIEFS OF POLICE

Chief CASE. My statement will be remarks in connection with bill H.R. 6211.

My name is Lewis R. Case. I appear today on my own behalf and for other Illinois policemen similarly situated, and as a representative of the Illinois Association of Chiefs of Police, of which I am a member of the executive board.

I urge the passage of H.R. 6211 because it will, in my opinion, remedy a most unjust and discriminatory situation.

This situation is best illustrated by my personal experience. In 1970 at the age of 55 I was appointed chief of police of the city of Rolling

Meadows. Because of my age I was ineligible for membership in the police pension fund of the city.

However, prior to appointment I was advised by the city manager that I could be enrolled in the Illinois Municipal Retirement Fund created by State statute to provide pensions for municipal employees not covered by a pension fund.

I was further advised that I would be ineligible for coverage under the Social Security Act. Accordingly, I accepted the appointment and contributed to both pension funds via deductions from my salary. A number of other police chiefs and fire chiefs were similarly covered and have been for a number of years.

Shortly after June 8, 1976, without prior notice or hearing, the Illinois Municipal Retirement Fund advised Illinois villages and cities that police chiefs and fire chiefs were ineligible for social security coverage, and that their contributions to social security would be refunded retroactively to January 1, 1969.

Some of these refunds have been made and some have not, and I am now in the position of being deprived of what myself and my family accrued over some 61½ years.

I have filed through administrative channels for relief from this action. The matter is pending and undecided. Needless to say, seeking relief in this manner is time-consuming, expensive, and uncertain.

I wish to point out that other municipal employees who are members of the Illinois Municipal Retirement Fund receive social security coverage. I am denied this coverage, I am told, because I am a policeman in a municipality which has a local police pension fund.

It apparently makes no difference to HEW that I am not eligible for coverage in this local police pension fund. I am also told that policemen in municipalities having no local police pension fund are eligible and have been enrolled in the social security system. This discrimination resulting to me and those similarly situated is obvious and the alleged reasons supporting this discrimination defies commonsense.

Thanking you for your courtesy and consideration, I am making these comments so that this can be rectified and cleared up and H.R. 6211 can be passed with dispatch. I would further like to state that on July 28, 1976, with the assistance and sponsorship of the Illinois Police Association, I filed a class action suit in the U.S. district court in Chicago asking the court to enjoin the cancellation of social security coverage and to declare that the proposed action was unconstitutional as applied to myself and those similarly situated and that HEW should be stopped from retroactively canceling this coverage.

In December of 1976, the complaint was dismissed, not on the merit but on the grounds that the court was without jurisdiction until administrative remedies had first been exhausted.

I know this information will certainly be noted on the committee and I wanted you to have it.

Just very briefly, there are many cities that are completely without police chiefs because of this dilemma right now.

Some of the money has been returned and some has not. Some have changed the names of their chiefs and they are operating under directors and all different types of names so they can be covered.

I think this is a disgrace for a man to hide under a different name. I can name many cities and towns that have done that.

With the passage of this bill, H.R. 6211, we are not asking that we go on with social security but we are asking that we be covered for all the years from 1969 right to date when it was discontinued arbitrarily without any notice to us.

Mr. COTTER. It does seem highly unfair, Chief.

I note here the court threw the matter out because they felt they didn't have jurisdiction. Have all administrative routes been explored?

Chief CASE. We have filed but we have not heard a thing. There are widows and other people on pension that will have more than half of their pension on social security taken away from them.

In my own case my pension would have been approximately \$300, and it has gone down to \$125—and my wife's from \$122 to \$92 just because of this particular act.

It will affect other towns because right now people are staying status quo and do not want to go to another city where they can't get a pension because they are all over age and yet they can get the benefits of our education in leading and guiding the community.

Thank you very much, Mr. Chairman.

Mr. SCHULZE. I would like to thank you, Chief, for a very well presented case, and I appreciate your bringing it to our attention. We will certainly look into it.

Chief CASE. Thank you very much, sir.

Mr. COTTER. Our next witness will be the Honorable John Rousselot, a distinguished Member of Congress from the State of California.

John, if you would like to take the witness table, you may proceed at your leisure. You may prefer to summarize your statement.

STATEMENT OF HON. JOHN H. ROUSSELOT, A REPRESENTATIVE IN THE CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ROUSSELOT. I will try not to be too leisurely, Mr. Chairman.

Banking and Currency today is hearing from Mr. Burns on the state of the Nation.

Mr. COTTER. I can understand your concern.

Mr. ROUSSELOT. I will ask unanimous consent to revise and extend my remarks and put my whole statement in the record.

I have basically six recommendations relating to the social security system.

I will briefly review those, some of which are not too new, I am sure, to the committee.

One is to eliminate the earnings limitation for retirees which in many cases discourages people 65 or over from going to work, if they wish to go to work.

Mr. SCHULZE. If you don't mind, if I could interrupt you, would you eliminate it or adjust it?

Mr. ROUSSELOT. I would eliminate it entirely but you understand I am an extreme liberal when it comes to people's ability to work and earn money and pay taxes on it.

My belief is to eliminate it entirely. I would be willing to have some kind of phasing on that position.

The next question is what do you do to accommodate or compensate for the loss of revenue from that position, and my belief is that one

way would be to do some creative thinking as it relates to the people entering into the social security system.

We give city government employees, firemen, teachers, the choice, the free choice as to whether to be in the system in the first place.

I think we should give consideration to people entering the labor force at 16, 18, 20, whenever they get the social security card, of having the alternative choice—and I have gone into this in my testimony in some detail—of having a free choice of entering the social security system or not entering the social security system, just as many pension plans are so structured—if they decide to reenter it, they would have to do so with some kind of an entry fee to get back into the system.

I think we should allow people the free choice who enter the labor force of either joining the system or not joining the system, and therefore, I think we would reduce the potential impact of end required benefits at retirement.

Mr. SCHULZE. Do you think 16 is the age to make that decision?

Mr. ROUSSELOT. I will leave that to the committee. I say that because that is when I got my social security card, and I think that would be the time to make the decision as to whether a person would or would not be in the system.

We might as well give them that free choice.

Now, the great arguments are, well, if you give them that free choice and they get to be 55 and they haven't properly saved or whatever, and they want to get into the system, they would have to pay some kind of an appropriate investment fee to get into it just like you would in any other retirement system.

Those are probably the two most startling recommendations that I have in my six—and I know you are trying to move the hearings along, so I certainly do not want to be accused of engaging in a filibuster.

If you would like to discuss these two basic proposals, I go into it in greater detail in my statement.

Mr. COTTER. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I would like to thank our colleague for his presentation. Are there any actuarial studies on what would happen if we did allow people to have the free choice?

Mr. ROUSSELOT. Let me start with the first point.

There have been studies that if we allowed people at the end to have no earnings limitation, if there was no earnings limitation the claim is it would cost the system, I think, between \$6.5 and \$7 billion a year.

My belief is that it would not be that expensive because all people would not make the decision to earn more than \$3,000 or \$4,000. But those who did, would pay taxes on that earned income and my belief is that would help compensate for some of the loss.

On the other end of the spectrum, there have been some studies that were done but not in great detail when we got into ERISA, which is the legislation we passed relating to general pension funds.

I have not reviewed all of that and that is something I am sure we would have to consider if we took this kind of a drastic step.

My belief is that since we have given the free choice to many segments of our society, primarily Government sector, to be in it or not,

for instance Los Angeles County workers have now applied to be out of the system.

We have given ourselves the choice not to be in the system. We are not in the social security system. I think we should give other individuals that free choice and we have to provide the appropriate safeguards to make sure if somebody wanted to come back in on the retirement system that it would be a penalty or an investment requirement. I guess is the better way to put it.

We have had former members that have come back and decided to go into our pension system and they have to cough up a certain amount of dough to be credited with previous years of service. I think we should do something similar with the social security system.

Mr. SCHULZE. If a move like that caused a large deficit in the fund, would you then recommend going to the general fund to make that deficit up?

Mr. ROUSSELOT. No. I would probably recommend some kind of capability to bond it somehow or sell securities. We do that with Ginny Mae and we do that with other instruments.

I would prefer that system rather than going into the General Treasury. That would be my suggestion. I realize that is very radical, but that would be my suggestion.

Mr. SCHULZE. I thank my colleague and thank the chairman.

Mr. COTTER. Mr. Steiger?

Mr. STEIGER. I have no questions.

I am always fascinated by the gentleman from California's ideas.

Mr. ROUSSELOT. I guess my basic concern with the social security system is the basic issue of free choice. We have all been encouraged by various groups to help them get out of the system: teachers, firemen, various city employees.

I think we should give that free choice to individuals.

Mr. STEIGER. There tends to be more of that coming around in California.

Mr. ROUSSELOT. That is because we are a great free-choice State. We don't have as many subsidies in our State in the field of dairies and stuff like that.

Mr. STEIGER. How about walnuts?

Mr. ROUSSELOT. No; walnuts don't get too many subsidies. It is only cotton.

[The prepared statement follows:]

STATEMENT OF HON. JOHN H. ROUSSELOT, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CALIFORNIA

In January of 1940 the first beneficiary of social security was Miss Ida M. Fuller of Vermont. She received a check for \$22.54. Miss Fuller lived up to the ripe old age of 100, staying with us until 1975. At that time she had contributed \$22 to the social security fund; she had received over \$20,000.

Miss Fuller's long life is clearly a statistical aberration, but it is evident today that there are many aberrations which are playing havoc with our social security system. We are now running a deficit in the social security program and will, at the current benefit and tax schedules, deplete the trust funds by the early 1980's. These trust funds, however, are not what we usually think of when we think of a private pension "trust fund." A private pension trust fund must have sufficient assets to meet all its prior commitments because it cannot be certain that any future contributions will be made; it invests its assets and reinvests the return on its assets in order to increase the benefits it will eventually be able to pay. The social security system, on the other hand, pays current benefits with

current taxes, and its trust funds are essentially nothing more than a petty cash fund to tide over any fluctuations in tax revenues. The social security system, therefore, does not rely on an investment of assets in order to provide future benefits. It relies on the willingness of future generations to pay taxes for benefits they will not enjoy. In essence, our social security system is financed on this principle: eat, drink, and be merry, for tomorrow your children will pay.

The demographic effects of the baby boom, and the recent decline in birth rates, gives us many reasons to believe that our children are not going to be inclined to pay. The price of the inter-generational transfer is going to be high. Today there are 30 retirees for each 100 workers. According to reliable projections, forty years from now there will be 45 retirees for each 100 workers, an increase of 50 percent. Under the present formula for determining benefits (assuming the 1972 double indexing mistake is corrected), the tax rate will have to rise by 50 percent—a payroll tax on employees of 16 or 17 percent. Added to the current marginal tax rate of more than 30 percent already paid by families earning \$10,000 to \$15,000, this extra tax would seriously penalize and deter those who would otherwise work, save and invest.

Unless our social security system invests its taxes into some kind of productive investment we are going to have political problems with our children. We are also going to have economic problems.

Current retirees are now, on the average, receiving more in social security benefits than they and their employees paid in taxes during their working years. This would not be unusual for a private pension which was earning a very high rate of return on its investment. But this excess of benefits over contributions, which is equivalent to earning a very high rate of return on taxes paid, is based on a series of unique circumstances. The future rate of return on these taxes is going to decline sharply.

Those who are retired today get more in benefits than they paid in taxes because the social security tax base, and the tax rate, are much greater in real value than they were when the current retirees were working. This phenomenon has four sources.

1. Average weekly earnings before taxes have grown during the past 25 years at an annual rate of approximately 1.7 percent (adjusted for inflation).

2. The population over age 16 grew at 1.4 per year and the labor participation rate rose as more women entered the labor force.

3. The coverage of social security was extended to include new industries, the self-employed, and other categories originally excluded.

4. The social security tax rate was increased from 2 percent in 1937, to 9.9 percent today (with an additional 1.8 percent for health benefits); and the amount of taxable income has been raised from the first \$3,000 to the first \$16,500 of salary.

Because of these four changes, real social security tax receipts, and therefore benefits, rose at a rate of a little over 10 percent a year—a pretty good rate of return. Changing attitudes on family sizes make population growth a poor source of sustained growth in future social security benefits. Social security now covers almost everyone, and extending the coverage to exclude government employees will not expand the tax base very much. But most important, we cannot continue to raise the tax rates five-fold every twenty-five years.

Just to continue the present benefit schedules would require a 15 percent increase.

With full maturity of the Social Security System, the rate of return that participants will earn on their Social Security contributions will be limited to the growth rate of real wages, at most, 2 percent a year.

Two percent a year is a very low rate of return for participants in a pension system. And there really is no rate of return at all for society because the taxes are not invested in any real productive capacity. On the other hand, the real annual yield on common stocks over the last twenty-five years, adjusting for inflation, was 8 percent. A private pension fund, even with a conservative portfolio, will earn more than our Social Security System. In 1964 the municipal employees of Los Angeles sat down and did their arithmetic and then voted on the option of remaining in the Social Security System. Of the 36,000 members of the retirement system, 27,000 voted to withdraw.

It is not going to be sufficient to make the system actuarially sound; we must make it return a reasonable sum for our investment.

Getting a good return on our Social Security taxes should also avoid economic distortions. The way we determine who receives benefits, and the way we collect taxes to pay for them, seriously distorts and hinders economic growth. We now

force people into retirement who in many cases are willing to work, who would be much happier if they worked, and whose valuable skills are much needed.

One way we force people not to work is through benefit schedules. Our benefit system is not simply tied to previous contributions, it is ultraprogressive. Many of those with below average earnings can now receive a higher standard of living after they retire than they did when they were working. Congress, however, can achieve whatever degree of progressivity it desires through the personal income taxes without this distortion. Income redistribution should not be included in the Social Security System. Also, welfare programs should be addressed directly to those in need through transfer payments. We already have a Supplemental Security Income program designed to remedy poverty among the aged; if it is inadequate, the SSI program should be reformed. Medical care for our elderly can also be supported by an independent program.

We also force people not to work by applying an earnings test for those who wish to receive retirement benefits. If an individual earns over \$3,000 during 1977 he loses \$1 in benefits for every \$2 earned over that amount—a marginal tax rate of 50 percent. We do not know for sure how many people this forces into retirement, but it is clearly a large number. In 1900, 63 percent of the men over 65 still worked; in 1929 this had dropped to 55 percent; now it is less than 25 percent. These citizens, of course, put their money into Social Security believing that it is theirs, and it is immoral that they should be denied access to it because they still want to be productive members of society. Therefore, it is my strong recommendation that you remove the earnings limitation presently applied to those who choose to receive retirement benefits while engaging in productive work. The earnings limitation is an unfair disincentive.

Furthermore, the earnings test is as foolish as it is unfair. Society as a whole loses real GNP by withdrawing skilled workers from the labor force. Besides, the usual argument that withdrawing the earnings limitation will cost the Social Security trust funds an additional \$7 billion a year is inadequate. It is true that removing the earnings limitation will increase the amount of benefits Social Security disburses. But those who will no longer be discouraged from working will learn additional income, and pay additional payroll and income taxes. These taxes ought to be deducted from the assumed cost, if any, of the earnings limitation repeal.

The worst distortion of the economy caused by Social Security occurs in capital formation. Most Americans treat the Social Security System as a form of saving. With the prospect of Social Security benefits it is possible to reduce savings through bank accounts or private pension plans and still have a level of consumption near pre-retirement levels. Because individuals substitute Social Security for real saving, private capital accumulation is dramatically reduced. In 1975 Social Security payments were more than \$75 billion, while personal saving was around \$90 billion. This \$75 billion, in the absence of Social Security might well have been added to the \$90 billion in private savings. It has been estimated that if our present Social Security System had never been enacted, our capital stock would today be larger by over \$1 trillion—that is, over 25 percent greater!

Less capital accumulation, of course, means lower productivity, lower wages, fewer jobs—less of everything for everyone. The rate of return on corporate investment is around 12 percent. That is what the nation receives in added GNP, although corporate and personal income taxes substantially reduce this amount to individual investors. Imagine what would happen to economic growth and unemployment if, in Fiscal Year 1977, Social Security taxes had been invested and the Federal budget had not run a \$60 billion deficit. We would have invested an additional \$140 billion in our potential GNP at 12 percent per annum. Even allowing for the increased depreciation on the higher capital stocks that increased investment could provide, instead of doubling our real income, real wages, and real GNP every 25 to 35 years, we could double it in 12 to 14 years. That, in my judgment, is how to fight poverty.

The present Social Security System is a strange crossbreed: it is not quite a social insurance plan; it is not quite a true pension plan; it is not a pure welfare scheme either. It combines the worst features of each. We must devise a scheme that is fair to all our citizens, while encourages economic growth, and which gives them more than an embarrassing 2 percent return on their taxes. The present Administration is proposing a new means of financing the temporary shortfall in Social Security receipts, yet this is only a temporary relief. The Administration has not addressed the permanent shortcomings of the System. To quote an old Irish politician from Philadelphia, "They have grabbed the bull by the tail and stared the situation in the face."

We must eliminate the drag on economic growth inherent in the social security system's replacement of personal savings. We must eliminate social security's unfunded liability, its \$4 trillion prospect of red ink and new taxes. We simply cannot grow if the government has to absorb all private savings to fund its deficits, or if it raises taxes to levels which eliminate the desire to work, save, and invest.

The first step in ending social security's adverse impact on growth is to end the present system of double indexing, to decouple, to use social security jargon. We should index benefits only once and that should be done by means of a price index, as the Advisory Panel on Social Security amendments. This would set a floor under retirement income at some predetermined real level. We should not, as some have suggested, attempt to index social security benefits to wages. This would legislate an ever increasing real value of benefits, regardless of need, heedless of the economy's capacity for growth, and blind to the fact that such a program would supplant all private pensions and savings as the promised benefits rise perpetually. This is what a wage indexing scheme would try to do. In fact, wage indexing would fail to deliver on its promises: savings would drop drastically, investment would fall, and the economy would stagnate, unable to meet benefit commitments.

Decoupling, if properly done, would reduce the present unfunded liability from \$4 trillion to \$2 trillion. We can eliminate this remaining \$2 trillion by stretching out benefits, by having people retire at a slightly later age. In my opinion, this will yield a private as well as a public good. Most of those who retire at age 65 soon cease to feel that they are useful members of society, while in fact, because of their skills, they are some of the most productive members of society. I therefore recommend the following:

1. Those who are 55 years of age, and who have probably already made their plans, should receive their decoupled benefits at age 65.
2. Those who are 45-55 should receive their full benefits at age 66.
3. Those who are 35-45 should receive their full benefits at age 67.
4. Those who are under 35 should receive their full benefits at age 68.

This stretching out of the payments schedule will eliminate the \$2 trillion liability. However, our problems will not then be over. We will be in a position where each generation pays for the next generation's benefits—exactly. There still will not be any social security taxes invested in new productive capacity.

We will still owe the piper an entire generation's worth of social security benefits before we can go on a pay-as-you-go basis with receipts coming from return on investments. Our social security system will still dampen our savings rate, and if we try to pay off the remaining debt by raising taxes, those increased taxes will also curtail economic growth. This is a dilemma. Real additions to savings and investment, however, can generate enough increases in Gross National Product and income tax revenues to pay this debt; real additions to savings and investment can generate enough revenues to advance the social security system to the point where each generation will pay for its own retirement. So we must, while bringing future benefits into line, provide for increases in savings, investment, and economic growth.

Therefore I am recommending the following changes:

1. We should separate all aspects of welfare from the retirement system. We must deal with them at the same time we reform the social security system, but we must make them separate.
2. We should decouple the present benefits immediately.
3. We should eliminate the unfair and uneconomical retirement test—the earnings limitation.
4. We should get rid of our unfunded liability by stretching out benefit schedules.
5. We should take measures to increase the savings rate:
 - (a) We should lower marginal tax rates.
 - (b) We should consider deducting from income taxes net additions to savings in the form of bank accounts, stocks, bonds, and other such investments. This so called "expenditure tax" is one way to eliminate the double taxation which occurs when income is taxed, saved, and then the interest is taxed again.
6. We should allow all new people who enter the labor force to be given a free choice of joining a government run or a government insured private pension plan. Both of these funds will be invested in real assets, in productive parts of our economy.

The present social security system promises benefits it cannot deliver and it saps our economic growth. If we scale down and stretch out benefits, if we pay to transfer our social security to a fully funded system based on real assets, if we can encourage savings, investment, and economic growth, then we can rid ourselves of a great social insecurity. If we do not do these things correctly we face a grim economic stagnation.

Mr. COTTER. Our next witness is Congressman Lagomarsino from California.

STATEMENT OF HON. ROBERT J. LAGOMARSINO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LAGOMARSINO. I have a fairly detailed statement. I would like to stress one thing that has already been mentioned by the other gentleman from California who just testified. The system is intended to be a service to the people, not a hindrance.

I would like to comment on a proposal which many of us have had before the Congress for some time. That is, of course, the earnings test.

To many people the earnings test has become a symbol of the arbitrary, condescending and unsympathetic way we treat many of our citizens.

It has been said that the true test of a society is the consideration it gives to its senior citizens.

On that score, I would say we have a way to go.

The earnings test is not only unfair but in my opinion it is counterproductive also. It is unfair because it arbitrarily selects a figure at the current time less than the official poverty level for a couple above which a 50-percent tax is applied on earnings.

Fifty percent. Even our highest corporate tax is only 48 percent.

This 50 percent tax is in addition to Federal and State income taxes that are paid on whatever earnings the person makes, and those are already deducted.

The penalty is also arbitrary because of course it applies only to earned income. So, the social security recipients who have been unable, for one reason or another, to put some money into stocks, bonds or other investments, is penalized, and finally the test is inhumane, at least in many cases, because it does not relate to need.

You know, we generally think of the elderly retired person when we think about social security and when we think about the earnings test, but the young widow with several children is in exactly the same bind, and she is penalized along with the retired man or woman.

I think it is just not realistic to believe that it is possible to raise a family under these limitations. But, there is an economic argument as well as a humanitarian one for repealing the earnings limitation. The earnings test deprives our economy of the skills of those who are capable of working and who are not now working for no other reason than to avoid having their social security checks reduced.

So, we not only lose their skills and their output, but we also lose the taxes which they would be paying on those earnings.

It is true that under the present system most of those taxes would go into the income tax pot instead of the social security pot.

However, they would also be paying, as I understand it, social security taxes on this increased earnings. This is all because of an arbitrary rule which perhaps made sense at one time, but I think no

longer does, which relies on age and income as a determinant of a person's capabilities.

The American Medical Association has confirmed that forced retirement is a significant cause of emotional and physical debilitation among senior citizens.

I think we don't have to have the American Medical Association tell us that. I think we all know it.

I think we all have seen experiences of that in our own families or among our friends and acquaintances.

So, I urge that you adopt a humane, realistic, and economically sound approach to this issue and approve the earnings limitation repeal contained in my bill or in any one of the other bills that are pending.

Should you determine after further study that repeal of the limitation doesn't make sense or is not economically feasible, I would suggest that you consider raising the limitation to some equitable limit rather than the inequitable limit at which it now stands.

[The prepared statement follows:]

STATEMENT OF HON. ROBERT LAGOMARSINO, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you today with regard to suggestions for improving the social security system. After reviewing my case files and canvassing my district offices, I have concluded there are a number of specific changes which should be made to make our social security system more responsive, efficient, and effective. Most of these have to do with remembering that the system is intended to be a service to the people, not a hindrance, and that we are dealing with human beings, not with objects or numbers. Because I am aware of the limitations on the committee's time, I will not go into those suggestions at this time, but I would like to submit them for the record for the committee's consideration during the course of your work.

At the same time, I would like to take a minute or two to comment on a proposal which you have had before you for some time, and which I believe would provide a substantial benefit to both the national economy and to the millions of citizens now drawing social security benefits—that is repeal of the earnings test.

The earnings test has become for many a symbol of the arbitrary, condescending and unsympathetic way we treat many of our citizens. It has been said that the true test of a society is the consideration it gives to its senior citizens. On that score, we have a ways to go.

The earnings test is not only unfair, it is, in my view, counterproductive. It is unfair because it arbitrarily selects a figure—at the current time less than the official poverty level for a couple, above which a 50% tax is applied on earnings. That's right, 50 percent. Even our highest corporate tax is only 48%.

This fifty percent tax is in addition to federal and state income taxes already deducted from those earnings. The penalty is also arbitrary since it applies only to earned income. So the social security recipient who has been unable for one reason or another to put some money into stocks, bonds or other investments, is penalized. Finally, the test is inhumane because it does not relate to need. The young widow with several children is penalized along with the retired man or woman. Could anyone realistically believe it's possible to raise a family under these limitations?

But there is an economic argument as well as a humanitarian one for repealing the earnings limitation. The earnings test deprives our economy of the skills and productive capacity of the millions of older citizens who want to work, who are capable of working, and who are not now working for no other reason than to avoid having their social security checks reduced. Not only do we lose their skills and output, we also lose the taxes which they would be paying on those earnings.

All this because of an arbitrary rule which relies on age and income as a determinant of a persons capabilities. Mr. Chairman, the American Medical

Association has confirmed that forced retirement is a significant cause of emotional and physical debilitation among senior citizens.

I urge you to adopt a humane, realistic, and economically sound approach to this issue and approve the earnings limitation repeal contained in my bill, H.R. 2457. Thank you [detailed testimony attached].

SUPPLEMENTAL SECURITY INCOME

The original concept of the SSI program was to provide a standard basic monthly income payment to persons meeting simple eligibility requirements, such as age, income, disability, etc. Under these provisions, the SSI program responded quickly to those in need with only limited administrative demands and minimal costs imposed on the Social Security Administration.

Since its original inception however, Congress, through legislation, and the Social Security Administration, through administrative regulation, have added a host of provisions and exceptions to this basic criteria for determining entitlement and establishing monthly benefits. We have become engaged in an on-going effort to address each of the variable conditions by which SSI recipients live. As a result, the administrative burden imposed on the Social Security Administration has increased substantially, requiring more and more personnel and higher and higher administrative costs in carrying out the SSI program.

I firmly believe we must return to the original concept of providing a standard benefit to persons found eligible through the application of simple basic criteria. The result will be a needed simplification and stabilization of the program.

Because of the many complicated and ever-changing exceptions and provisions for living arrangements, such as cooking facilities, housing conditions, and so forth, we now have an SSI payments policy system that is so complex that two well trained claims representative can come up with differing payment levels in the same case. As a result, decisions of the local social security office are readily reversed on appeal. The result is greater inequity. Those persons who appeal SSI entitlement decisions are frequently rewarded while those who fail to appeal must be satisfied with the lesser award determined by the local claims representative.

The complicating exceptions and provisions, which are constantly being amended and altered by administrative and legislative action, have resulted in a general lack of clear cut instruction for the administration of the program. The operation of Title XVI (SSI) is a significant contrast to the relatively smooth and predictable operation of Title II (regular social security retirement).

Because of the many provisions now operative in the SSI program, instead of receiving a standard basic grant, as originally conceived, recipients today are receiving from \$100.00 per month to a maximum of \$316.00 per month.

Because of these ever-changing provisions, local social security offices are constantly put in a position of having to go back over recipients' accounts and make modifications to comply with new rules and regulations.

I recommend the following changes be made:

1. *Redetermination of benefits*

Arbitrary redetermination of benefits is now supposed to be conducted once per year by local Social Security Administration field office personnel. This requirement is designed to protect against fraud by recipients of the program. To meet this requirement, local SSA offices have whole units of personnel devoting their full attention to redeterminations and overpayments.

The SSI system could enjoy just as much protection by requiring only one-half of the total accounts in each office be redetermined annually on a staggered basis. Most recipients accounts are re-examined anyway when they change address.

2. *Overpayments*

Income computation should be performed on a monthly rather than quarterly basis. This would preclude overpayment charges that are built into the system as a result of issuance of retroactive benefits due the individual.

Under present regulations, an individual who receives a retroactive payment due him for several months can be charged with an overpayment for that quarter, disallowing future benefits. This is true even though the income that was charged as an overpayment represented past SSI or Social Security retirement benefits for which he was entitled.

The Social Security office in Santa Barbara, California reports over 600 overpayment cases in a single quarter. This places additional demands and expenses on an already over-burdened system. By revising Section 1611, to allow for income computation on a monthly rather than quarterly basis, these problems can be avoided.

3. *Marital Discrimination*

Each claimant for SSI benefits should be treated individually without reference to their marital status. The old adage that "two can live as cheaply as one" simply is not true, particularly in this age of housing shortages and inflated food and medical expenses.

Under the present SSI program, married couples receive a substantially lower benefit than two individuals who are not married. The result is that those who are legally married are penalized. This system forces people to get divorced just to qualify for SSI benefits.

By treating each claimant individually, without reference to marital status, the administrative burden on SSA to constantly adjust accounts—when a spouse goes to work, when one dies, when they get divorced, when they get married—would be substantially lessened. In the end, we would be reducing administrative costs and eliminating an inequitable situation.

4. *Housing provisions*

I cite the recent case of a constituent who had her SSI benefits substantially reduced because she was fortunate enough to obtain private housing through a friend who owned an uninhabited dwelling and was willing to let her live in it at a minimal rental fee per month. SSI regulations, however, require that the actual fair market rental value of the residence be used to compute her SSI benefits. As a result, her SSI benefits was substantially reduced to the point she could no longer afford to live in this private dwelling. She was forced to move out of this private residence, placed in federally subsidized public housing (at substantial cost to the taxpayers) and receive the full entitlement of SSI benefits.

Under these regulations, we have discouraged individuals from seeking out private housing arrangements that cost the taxpayer nothing, and forced the individual to require more public assistance. Such regulations are counterproductive and should be changed.

5. *Suggestions for changes in local Social Security offices*

Congress should not think that clients in the programs it brings under federal administration are, by virtue of the transfer, better served. There may, indeed, be a psychological improvement in receiving payments from a federal agency like the Social Security Administration but the eligibility requirements were in no way simplified nor is the administration so dramatically improved that problems do no occur. Recipients in these programs may get paid, but much of the work that was done day-to-day and person-to-person by local agencies for their aged, disabled or poor clients is simply not being performed by these federal programs.

If Congress sole concern is that payments are made and from a federal source, Social Security Administration offices are meeting that task. However, unless eligibility rules and computation methods are simplified and stabilized, and system limitations in the computer payment programs are removed, Congress must expect continuing criticism of program performance. Federal administration of the SSI program is not designed for 100% accurate fully documented accountability, nor are the local offices of the Social Security Administration staffed to achieve that result.

SUGGESTIONS FOR CHANGES IN LOCAL SOCIAL SECURITY OFFICES

In Ventura County, two social security offices with a total permanent staff of 75 serve a population of 300,000 (Thousand Oaks and Simi residents are served by the office in Canoga Park), including 43,783 persons receiving social security checks and 8,521 supplemental security recipients. By contrast, Ventura County's Public Social Service Agency, according to their Proposal to Reorganize dated January 7, 1976, budgeted for 206 positions in its Income Maintenance Division, which administers the Aid to Families with Dependent Childrens program, the Medical and Food stamp programs serving a clientele of about 14,000. To remedy this inequality, we should :

(a) Create or redesign more meaningful SSA positions and position descriptions which cover actual requirements. Right now we are continually moving personnel in and out of specialized jobs because they must do the full range of their jobs. This causes constant disruption of the work process.

(b) Reduce volume and frequency of instructional changes sent to field offices.

(c) Strive for fewer employee irritants such as continued overtime.

(d) Abandon the "open bull pen" type of SSA Field office and give Claims Representatives and Supervisors some semblance of privacy in which to ask clients to bare the secrets of their lives—such as prior marriages, illegitimate children, etc. and for supervisors to counsel their employees in privacy.

6. Other deficiencies that are a disservice to the public we serve are:

(a) A complex disability claims process that works against prompt and equitable decisions in disability claims both under social security and SSI programs.

(b) A computer system for SSI that still, 3½ years after initiation, cannot continue payments automatically to a surviving spouse when a death occurs in a family.

(c) An inhumane regulation requiring that the market value of a cemetery plot be considered among an SSI claimant's "resources" in a determining eligibility for benefits. Why should such a plot, clearly held for an inevitable need, bar a person's access to money for current living expenses?

By making these relatively simple changes in the law and the way it is administered, I believe we can make the system more responsive, more efficient, and more effective in serving both the taxpayers' interests and those of the client. Thank you.

Mr. COTTER. Do you have any figure in mind?

Mr. LAGOMARSINO. If you were to raise it instead of repeal it?

Mr. COTTER. Yes.

Mr. LAGOMARSINO. The figure that has most been mentioned, I think, is something like \$7,500. I think if you get much above that you might as well repeal it. You can argue that either way, I guess.

Perhaps there is some reason for having a limit instead of a repeal.

Perhaps it doesn't make too much sense to have the president of General Motors or someone like that drawing social security while he is being paid \$500,000 a year or something of that kind, but I think that it certainly ought to be raised considerably.

Repeal would be simple. That would be more equitable, but you could probably arrive at a figure of \$7,500, \$8,000, and even \$10,000.

Mr. SCHULZE. Do you have any thoughts on a gradual phaseout, as Congressman Rousselot recommended?

Mr. LAGOMARSINO. I had not thought about that, but it might be worthy of consideration.

It might relieve some of the anxiety that apparently some groups have about what this might do to the labor force and younger people trying to enter it.

I don't really think—well, it might have that kind of effect to some degree.

We have to be realistic about this. I think a lot of employers if given a chance, an opportunity of hiring an older, more experienced person who wants to work as compared with a younger person with no work experience who may or may not want to work, and some even exhibit that when they come in to ask for jobs, they might very well hire the older person. They are doing it now.

Mr. SCHULZE. We did have testimony—if you will pardon me, Mr. Chairman—

Mr. COTTER. Certainly.

Mr. SCHULZE [continuing]. From the AFL-CIO, who were opposed to the elimination of the earnings test.

In their testimony they said that their major concern was the economic viability of the fund and not the impact it would have on employment.

So, in their testimony they did not even mention the impact on employment.

Mr. LAGOMARSINO. I had always assumed that was the reason for their opposition.

One suggestion might be if there is increased earnings or increased income from income taxes paid as there certainly would be, perhaps some device could be—I am against the idea of supporting social security with general revenues.

However, if we did it through some means as tied in directly with this system, as this would be, through some exception to it, you might consider some way of earmarking a portion of part of the income taxes that come from these people for that purpose, at least to overcome any adverse effects.

I think that would more than pay for it and it would not cost the Treasury anything because the Treasury is not getting that money now.

Mr. COTTER. Mr. Ketchum?

Mr. KETCHUM. Thank you, Mr. Chairman.

Bob, I appreciate your appearing before the committee. I happen to be for the abolition of the earnings limitation. I think that it had a place when Social Security was first initiated and we were in the depths of the depression, and we were trying to remove people from the work force and at the same time supply some assistance.

I think that is an idea whose time has run out.

Our seniors are faced with fixed incomes and no way to combat inflation other than to go to work in many cases. The danger, though, and we discussed it here before at some length, is something you just mentioned.

You said you might have an inequitable situation where the chairman of the board of General Motors would be drawing the \$500,000 salary and still be drawing Social Security.

I think those isolated cases are ones we just have to face and we will have to accept if we are going to make the system equitable for everyone. Otherwise, what it will add up to is a means test program, and then we will be in the welfare business rather than the social security business.

The abolition of that earnings limitation is going to affect thousands of more people in, I think, a very constructive fashion.

I think we have to face that.

Mr. LAGOMARSINO. I would point out, not for the committee because the committee is well aware of this, for the audience, that now when a person reaches the age of 72 there is no limitation whatsoever, and people who are still working who have never retired at all are eligible for and do receive automatically, in fact, social security benefits.

Mr. KETCHUM. If you are going to do it at all, I think if you do it in any other fashion, you are taking Social Security from an insurance program to a welfare program, and I don't think we want that.

If we are going to be equitable, we have to go straight across the board and make one rule apply to everyone.

Mr. LAGOMARSINO. There is no question but what that would be the simplest way.

Mr. COTTER. Thank you very much for appearing.

The next witness will be a colleague of mine from the State of Connecticut, Chris Dodd.

If you would prefer to summarize, your full statement will appear in the record.

**STATEMENT OF HON. CHRISTOPHER J. DODD, A REPRESENTATIVE
IN THE CONGRESS FROM THE STATE OF CONNECTICUT**

Mr. DODD. Thank you, Mr. Chairman.

I have a very brief statement and I will summarize parts of it and read parts of it.

Mr. COTTER. Without objection, your whole statement will be made a part of the record.

Mr. DODD. Thank you.

Mr. Chairman, I would like to thank you for the opportunity to appear before your committee today to discuss with you and your colleagues the conditions governing the eligibility of the blind for disability benefits.

My foremost reason for being here today is to express my support of the efforts of this Congress and this administration to join with the blind and all of the handicapped to establish once and for all their rightful claim to the status of first-class citizens and, likewise, to help them eliminate all forms of discrimination with their attendant barriers—whether they be physical barriers, employment barriers, or financial barriers in general.

In this regard, I might add, this legislation—passed in the Senate on several occasions—which deals with the blind, may raise questions about the impact of the social security disability benefits system on other handicapped persons.

It may be that their employment potential has also been adversely affected, and I feel that we should be open to the consideration of this larger situation at a future point in time.

I submit that while the present law endeavors to compensate the blind for loss of earnings, due to their disability, it discourages, at the same time, the gainful employment and, ultimately, the financial independence of this population.

It is my opinion, Mr. Chairman, that we have a responsibility to promote such employment as well as financial security to the degree possible and to eliminate those aspects of the law which act as negative incentives to gainful employment of the blind; otherwise, we do a great disservice to this population and to us all.

I would like to stress that I am aware that it is not the intent of this Congress nor of this law, in theory, to in any way encourage an individual's subsisting at the poverty level or his remaining unemployed rather than sacrifice the financial security provided by his disability benefits.

However, I would like to bring to your attention my dissatisfaction with the present requirement that limits the income of the blind to \$200 per month in most cases, and as little as \$140, in some cases, in addition to their disability benefits.

I am further distressed to know that the present law makes no allowances for the individual who establishes himself as a working, taxpaying member of society but who is limited by his disability to a relatively low-paying position or who, as a result of his disability, is forced to take a considerable cut in pay.

This individual is exempt from consideration for disability benefits for his loss of income, and I believe that we have the opportunity here to rectify such situations.

An illustration of such cases is an individual who wants to work and who is offered a job which pays \$300 per month, for example.

First of all, this will be taxed money. Were he not to take this job, he could remain unemployed and collect in the neighborhood of \$262 per month, tax free. I might add that this figure is based on the social security estimate of the average disability benefits payment.

On the other hand, this individual could decide—rather than take the job—to supplement his benefits with a part-time job with earnings of anywhere from \$130 to \$200 a month, depending on the particular circumstances of his case.

This would bring his monthly income in the range of \$392 to \$462—the majority of which is tax free. There is no incentive here for this person to accept the initial job offer.

The most striking aspect of this kind of speculation is that in the case of a disabled individual who is limited to earnings in the range of \$130 to \$200 because of limited skills or his disability, the prospect of a salary increase of a minimal amount would potentially disqualify him from continued benefits and, in effect, reduce his income by more than half.

It is not surprising, in my estimation, that an individual would choose to bypass such employment opportunities, whether it be a raise or a position advancement, if it were to severely reduce his income.

I think it is clear that the present system for qualifying for benefits on what is largely an all-or-nothing basis is unrealistic and counter-productive.

A more reasonable alternative to this situation would be to offer a reduced benefit payment to the individual who has the opportunity to advance his position and his earning potential.

Rather, I would like to ask that the committee consider in its review of proposed amendment to title II, the possibility of incorporating a graduated scale of payments, which would have a designated ceiling at which point the payments would be superfluous and cease.

In this way, Mr. Chairman, I think that we would eliminate the implicit and explicit barriers to the gainful employment of the blind, while retaining the necessary financial security and providing an incentive to the blind to improve their employment possibilities and promote their personal, financial independence.

I would be happy to answer any questions you might have.

I realize under the suggested legislation there would be payments that would go out to people in this status almost regardless of their financial earnings.

First of all, it is impractical. I don't think you will get it, anyway. No one can really give an estimated cost of that particular program just for this particular group.

[The prepared statement follows:]

STATEMENT OF HON. CHRISTOPHER J. DODD, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CONNECTICUT

Mr. Chairman, I would like to thank you for the opportunity to appear before your committee today to discuss with you and your colleagues the conditions governing the eligibility of the blind for disability benefits.

My foremost reason for being here today is to express my support of the efforts of this Congress and this administration to join with the blind and all of the handicapped to establish once and for all their rightful claim to the status of first-class citizens and, likewise, to help them eliminate all forms of discrimination with their attendant barriers—whether they be physical barriers, employment barriers, or financial barriers in general.

In this regard, I might add, this legislation—passed in the Senate on several occasions—which deals with the blind, may raise questions about the impact of the social security disability benefits system on other handicapped groups. It may be that their employment potential has also been adversely affected, and I feel that we should be open to the consideration of this larger situation at a future point in time.

It is for these reasons, then, that I bring to your attention my shared concern with the members of the blind population that the present law fails to adequately respond to the financial disadvantages which confront the blind.

I submit that while the present law endeavors to compensate the blind for loss of earnings, due to their disability, it discourages, at the same time, the gainful employment and, ultimately, the financial independence of this population.

It is my opinion, Mr. Chairman, that we have a responsibility to promote such employment as well as financial security to the degree possible and to eliminate those aspects of the law which act as negative incentives to gainful employment of the blind—otherwise, we do a great disservice to this population and to us all.

I would like to stress that I am aware that it is not the intent of this Congress, nor of this law, in theory, to in any way encourage an individual's subsisting at the poverty level or his remaining rather than sacrifice the financial security provided by his disability benefits.

However, I would like to bring to your attention my dissatisfaction with the present requirement that limits the income of the blind to \$200 per month in most cases, and as little as \$140, in some cases, in addition to their disability benefits.

I am further distressed to know that the present law makes no allowances for the individual who establishes himself as a working, taxpaying member of society but who is limited by his disability to a relatively low-paying position or who, as a result of his disability, is forced to take a considerable cut in pay.

This individual is exempt from consideration for disability benefits for his loss of income, and I believe that we have the opportunity here to rectify such situations.

An illustration of such cases is an individual who wants to work and who is offered a job which pays \$300 per month, for example. First of all, this will be taxed money. Were he not to take this job, he could remain unemployed and collect in the neighborhood of \$262 per month, tax free. I might add that this figure is based on the social security estimate of the average disability benefits payment.

On the other hand, this individual could decide—rather than take the job—to supplement his benefits with a part-time job with earnings of anywhere from \$130 to \$200 per month, depending on the particular circumstances of his case. This would bring his monthly income in the range of \$392 to \$462. The majority of which is tax free. There is no incentive here for this person to accept the initial job offer.

The most striking aspect of this kind of speculation is that in the case of a disabled individual who is limited to earnings in the range of \$130 to \$200 because of limited skills or his disability, the prospect of a salary increase of a minimal amount would potentially disqualify him from continued benefits and, in effect, reduce his income by more than half.

It is not surprising, in my estimation, that an individual would choose to bypass such employment opportunities, whether it be a raise or a position advancement, if it were to severely reduce his income. I think it is clear that the present system for qualifying for benefits on what is largely an all or nothing basis is unrealistic and counterproductive.

A more reasonable alternative to this situation would be to offer a reduced benefit payment to the individual who has the opportunity to advance his position and his earning potential.

I would like to emphasize to the committee, Mr. Chairman, the fact that I am not convinced that a proposal to extend benefits to those who are ineligible under the present requirements should have to provide across-the-board benefit payments of like amounts for the unemployed, the low income, the middle income, and the high income blind population.

Rather, I would like to ask that the committee consider, in its review of the proposed amendment to title II, the possibility of incorporating a graduated scale of payments, which would have a designated ceiling at which point payments would be superfluous and cease.

In this way, Mr. Chairman, I think that we would eliminate the implicit and explicit barriers to the gainful employment of the blind, while retaining the necessary financial security and providing an incentive to the blind to improve their employment possibilities and promote their personal, financial independence.

Mr. COTTER. Thank you very much, Chris.

I know Chairman Burke is very much concerned about this. I believe it is a cosponsor of one bill, and he has expressed to me an interest in addressing this problem, and I hope that we can do so before too long.

Are there any questions, Mr. Schulze?

Mr. SCHULZE. I would like to thank our colleague for a very interesting presentation.

How do you feel about the earnings limitation as testified on by our two previous witnesses?

Mr. DONN. I happen to agree with my colleague, Mr. Ketchum.

I think you would make a mistake to have earnings limitations in there.

I don't think that the social security program should be viewed or judged in that light. I think we would remove it—I think it was designed to be at the outset and I would be very leery of doing that.

I realize that raises some serious financial questions and so forth, but I think it changes the very nature of the program and I would be more inclined to agree with Mr. Ketchum.

I have not locked myself into any hard position, but I certainly lean strongly in that direction.

Mr. COTTER. Mr. Steiger?

Mr. STEIGER. No questions.

Mr. COTTER. Mr. Ketchum?

Mr. KETCHUM. Thank you, Mr. Cotter.

Thank you for appearing.

As an individual, I have very great sympathy for the blind, and they really have some very unusual problems.

Prior to the inception of SSI, in various States we went through the categorical aids where we had one level of aid to the blind, one for the disabled, and one for the aged, and we wrestled with that for many years and it depended on who had the best lobby, really.

The blind people in my State have traditionally received more consideration in many cases.

This proposal that you bring us has a great deal of merit, but at the same time illustrates one of the problems that we experience in the welfare field, with the earnings disregard, where we are trying to get somebody off of welfare and in the process of doing that, we are paying that individual more to be on welfare with the earnings disregard than some individual who has gone out on his own who has not been on welfare.

It is creating a very inequitable situation.

We may very well do that with this proposal, rather than say if we are going to do this for blind people we should also approach it for the disabled.

Mr. DODD. This is what I was saying in my opening remarks.

I think at some point you are going to have to look at some of the other people as well.

Mr. KETCHUM. At the risk of committing heresy, one suggestion that might solve this—and I expect the ceiling to come crashing down—would be a proposal to tax benefits.

That is a very knotty issue, because people have already paid taxes on their contribution as have their employers.

I am not suggesting that we jump into this, but it is one answer.

Mr. STEIGER. Actually, if my colleague would yield, if one adopted that concept of basic tax reform; that is to say, if one were to pay taxes on all earnings, including that which comes from the Government, one would then be eligible to deduct social security taxes. Viewed in that light, the problem of an unfairness in taxpayments for employees is not quite as bad as might at first be thought.

Mr. KETCHUM. Yes; you would be able to deduct the taxes that you had paid; that is the taxes that you are paying now while you are working rather than the taxes that were paid prior to that which made you eligible for social security, except in this case.

Mr. DODD. It is an interesting concept.

Mr. KETCHUM. Thank you very much, Mr. Chairman.

Mr. COTTER. We will recess for 5 minutes.

There is a vote upstairs.

[A brief recess was held for voting purposes.]

Mr. COTTER. Will the committee come to order, please.

Our next witness will consist of a panel of Mr. Gerald Slaybaugh, representing the National Conference of State Social Security Administrators, and Mr. William Joseph, director of the New Jersey Division of Pensions.

Gentlemen, would you take your seats at the witness table and you proceed as you wish.

Mr. KETCHUM. Mr. Chairman, if I may, for just a moment, make sure that the record accurately reflects what I was referring to earlier; that is, that whereas employers may deduct the costs of social security, employees may not.

I certainly would include in any proposal that I would make an offsetting or a compensating balance by permitting employees to deduct their taxpayments for social security just as businesses do.

Mr. COTTER. Thank you, Mr. Ketchum.

Gentlemen, Mr. Slaybaugh, Mr. Joseph, you may proceed.

A PANEL CONSISTING OF GERALD P. SLAYBAUGH, FIRST VICE PRESIDENT, NATIONAL CONFERENCE OF STATE SOCIAL SECURITY ADMINISTRATORS, AND WILLIAM J. JOSEPH, DIRECTOR, NEW JERSEY DIVISION OF PENSIONS

Mr. SLAYBAUGH. Thank you, Mr. Chairman.

My name is Gerald Slaybaugh and I am here representing the National Conference of State Social Security Administrators as the first vice president

I would like to begin by pointing out that there are some basic facts that must be considered when talking about State and local coverage under social security.

Such coverage is, as you know, completely voluntary because of the 10th amendment to the Constitution, which makes mandatory coverage impossible.

Such coverage is achieved through compacts or agreements between the States and the Federal Government. These compacts require the States to underwrite and guarantee all employers and employer contribution on compensation in covered positions from all political subdivisions affected by the compact.

The States are required to administer all social security coverage at the State and local levels of government with the IRS having no jurisdiction whatsoever.

I would therefore like to offer my testimony in three basic areas: First of all, annual reporting; second, the financial impact; and third, more frequent deposits should they arise, and finally, make recommendations concerning the two aforementioned issues.

The National Conference of State Social Security Administrators is vigorously opposed to changing any part of our reporting and depositing structure that will result in a loss of revenue to our States and ultimately to an increase in taxes to supplement the loss of revenue.

The changes as proposed by the Social Security Administration fails to recognize the basic difference between private employers and public employers in that each State as a party to the agreement is responsible both for the filing of accurate wage reports and the payments of contributions due thereon.

If a subdivision fails to file a report or to pay the contributions the State ultimately must pay and under our present quarterly system that has been in effect for 26 years we assure ourselves of the accuracy and the payment of the contributions due thereon.

Should annual reporting become a reality, no such assurance can be made for the States to exercise no direct control over its political subdivisions.

While it is true that we would reduce four quarterly reports to one annual report, we would not be able to check the deferral trends of reporting that are basically checked on our quarterly reports.

The financial impact of more frequent deposits are many.

Due to the complexity the cost of administration is greater than in the private sector and also because there is more effective enforcement.

While the IRS receives considerable sums for administration from the social security trust funds, there is no administrative cost to the Federal Government under section 218 that provides social security coverage for State and local employees.

A high-level performance has been developed despite the difficulties of dealing with thousands of small political subdivisions that in many instances are staffed by part-time reporting officials with limited administrative experience and frequent turnover.

In private employment full-time experienced personnel are largely involved. In coverage under section 218, the record is miserable. This is shown by the comprehensive report inserted by Senator PROXMIRE in the Congressional Record of December 12, 1974.

For my recommendations, one, if annual reporting becomes law we recommend the removal of all liability from the State agreements; two, each State administrator completed a questionnaire as recommended by this very subcommittee and surely after reviewing the individual results you can only conclude for every dollar the Social Security Administration receives from the additional interest earnings it would cost the individual States \$2.

We therefore recommend this subcommittee study the questionnaires on an individual basis and determine the fiscal impact on each and every State.

Each State entering into the agreement was aware of the time cycles for the reporting and depositing of the money and prior to entering into the agreement, we assured ourselves of our capability of meeting the requirements.

However, under the proposed annual reporting and increased depositing time cycles, there is a good chance we will not be able to fulfill the requirements of our agreements.

I therefore recommend legislation be passed to require the Social Security Administration to enter into new compacts with each State taking into account the previous recommendations and liberalizing the time requirements to any interest assessments being made.

In summary, gentlemen, the National Conference of State Social Security Administrators and each member State representing over 9 million public employees at the State and local levels vigorously oppose any change in the law or regulations proposed on a unilateral basis to our bilateral agreement that will have adverse effects on our fiscal integrity of the States and ultimately result in increased taxes.

Thank you.

Mr. COTTER. Thank you very much, Mr. Slaybaugh.

[The prepared statement follows:]

STATEMENT OF GERALD P. SLAYBAUGH, NATIONAL CONFERENCE OF STATE SOCIAL SECURITY ADMINISTRATORS

The National Conference of State Social Security Administrators during its annual conference that was held in Mobile, Alabama on August 18 and 19, 1975, passed two resolutions vigorously opposing (1) the unilateral change of a bilateral agreement whereby the states would report on an annual basis rather than a quarterly reporting system, (2) a resolution opposing the increase of frequency of deposits from a quarterly depositing procedure that has been very successful over the past 25 years to a depositing system where the states would be required to deposit at least monthly if not more frequent. The resolutions passed and sent to members of congress read as follows :

RESOLUTION NO. 12

Whereas, certain Federal officials have recently proposed that a shift from quarterly to annual reporting under social security be made applicable to all covered employees, including employees of State and local governments ; and

Whereas, the social security coverage for employees in the private sector is virtually universal but coverage for public employees is provided under an entirely different concept in that it is optional in each political subdivision and consequently excludes from coverage thousands of public employees ; and

Whereas, a substantial number of reporting officials in the public sector serve on a part-time basis at nominal compensation and often for short periods of time before they are replaced by another part-time official at like consideration ; and

Whereas, the State and their instrumentalities have found it extremely difficult, because of limited sources of revenue and varied fiscal responsibilities, to allocate sufficient funds to the operation of State agencies for Social Security ; and

Whereas, the relative success of the social security program for public employees as compared to coverage in the private sector is due primarily to the dedication of State Social Security Administrators in continuing educational programs for public administrators throughout the State; and

Whereas, a completely new procedure of annual reporting by widely diverse and geographically removed public agencies at the same time that the State is still held responsible for timely and accurate reporting, will create more paper work and more expense at the local level, exactly the opposite of the purported reason for effecting this change in the private sector; and

Whereas, Federal officials are apparently oblivious to State and local government statutes and regulations which require complete and detailed documentation before any expenditure can be approved; and

Whereas, any relaxation of the constant monitoring by State Administrators of complicated and confusing coverage questions could destroy the social security program for public employees: Now, therefore, be it

Resolved, That the inclusion of State and local governments in the proposed change from quarterly to annual reporting of social security wages is contrary to the best interests of the States and instrumentalities and the thousands of public employees who are now covered under the Federal Social Security programs; and be it further

Resolved, That the National Conference of State Social Security Administrators, through their elected and appointed officials in each of the States oppose any change to annual reporting for public employees including full hearted support of Federal legislation which would exempt public employees from any regulation or statute which substitutes annual reporting for the present quarterly reporting procedures; and be it yet further

Resolved, That a copy of this resolution should be promptly forwarded to the Secretary of the Department of Health, Education and Welfare, to the Commissioner of the Social Security Administration and to the elected representatives of each State in the Congress.

RESOLUTION NO. 13

Whereas, it has been recommended by certain Federal officials that each of the 50 States, the U.S. possessions and every public agency, throughout the entire country, which has obtained social security coverage for its public employees under section 218 of the Federal Social Security Act be required to pay social security contributions to the Federal Government weekly, semi-monthly or monthly, rather than the single payment each calendar quarter that is prescribed; and

Whereas, social security contributions have been paid only once each quarter for the almost 25 years since social security was first made available to public employees; and

Whereas, quarterly payment of contributions for public employees is part of an administrative procedure that has so long been accepted by the contracting parties, the States and the Federal Government, the procedure has the force and effect of law and now may be altered only by mutual agreement between the contracting parties; and

Whereas, continuation and expansion of social security coverage for public employees should, rather than interest earnings, be of substantially more concern to both State and Federal officials and their elected representatives because many public employees are in the lower salary brackets and therefore need social security retirement, death and disability coverage; and

Whereas, the Federal Government, through recent revenue-sharing pronouncements, recognizes that it has preempted the primary sources of tax revenue and, therefore, has a financial responsibility to assist the States in meeting their governmental obligations to their citizens, all of whom are citizens of the United States; and

Whereas, more frequent payment of social security contributions for public employees would, in the initial year in which such change is effected, require each State and each public agency throughout the country to appropriate sufficient monies in its 12 month budget year to cover social security liability for 14 months, thereby causing, even assuming a minimal increase in employees, covered wages, or contribution rates, a 25 percent increase in every public agency budget, and a consequent increase in local taxes, with absolutely no resultant benefit to any taxpayer; and

Whereas, increasing financial pressures are even now forcing public agencies to terminate social security coverage for their employees under present payment

procedures, any bureaucratic and unreasoned increase in the employer's cost of providing coverage will unquestionably cause termination of coverage for thousands of public employees; and

Whereas, it has been possible to develop an excellent wage reporting program for public employees with limited local resources, part-time, short-time administrators at the State and local levels, only through continuing education and the dedication of public officials who administer the program, so that any substantial change in procedures will frustrate these administrators and may well imperil the entire program for public employees; and

Whereas, a proliferation of wage adjustment reports which would result from a procedural change in deposits would increase the cost of administration for the Federal Government and, therefore, offset anticipated financial advantages for the Federal Government; and

Whereas, the transfer of temporary investment income from one governmental agency in the U.S. to another governmental agency results in no benefit to citizens of this country: Now, therefore, be it

Resolved, That every State Social Security Administrator and officials in each of the 50 States, Puerto Rico and the Virgin Islands demand of their Federal Government that the present procedure of paying social security contributions for public employees once each calendar quarter continue unchanged; and be it further

Resolved, That if Federal legislation is required to guarantee the continuation of this procedure that such legislation be promptly introduced and fully supported by the National Conference of State Social Security Administrators through their elected representatives; and be it yet further

Resolved, That a copy of this resolution should be promptly forwarded to the Secretary of the Department of Health, Education and Welfare, to the Commissioner of the Social Security Administration and to the elected representatives of each State in the Congress.

The paperwork implications on both annual reporting and the frequency of deposits are detailed herewith:

The proposal of the Secretary of the Treasury and the Secretary of Health, Education and Welfare to make annual reporting under the Social Security Act applicable to state reporting for public personnel under Section 218 of the Act at first glance seems to reduce red tape and paper work. This may be quite true in the private sector but a different situation prevails for reporting on behalf of public personnel.

Likewise the threat of the Social Security Administration to nullify the quarterly remittance system under Section 218 which has prevailed for a quarter century and on the basis of which states voluntarily promulgated agreements with the federal government does not without analysis indicate the real effect in the public sector as to the paper work involved.

The Social Security Administration bureaucracy looks at the functioning of Social Security in the private sector under the Internal Revenue Service and are lulled by the fact that with minor exceptions for personnel of certain private non-profit organizations, coverage is mandatory and even more important is universal. Hence, the enforcement problem—at least in theory—is relatively simple.

But a very different situation exists in the public sector under Section 218. Under Section 218 there are numerous exceptions and possible exceptions to coverage.

In the first place the law excludes:

- (a) Unemployment programs;
- (b) Services of patients and inmates in institutions;
- (c) Temporary emergency employees;
- (d) Covered transportation service under S. 210(k);
- (e) In many cases police and firemen under a public retirement system;
- (f) Local and state personnel under the federal civil service retirement system;
- (g) Personnel of religious orders; and
- (h) Foreign nationals temporarily in the United States.

The law also permits optional exclusions under Section 218. In order to ascertain which of the exclusions are in effect in any entity it is necessary to examine not only the original state-federal agreement but also any of the numerous modifications of that agreement which may have lowered or eliminated exclusions.

Also in most states the governing body of each political subdivision had the option of adopting any or all of the permitted exclusions, and there must be

examined not only the original state-federal agreement pertaining to that political subdivision as modified, but also any subsequent modification thereof which may have lessened or eliminated any or all exclusions for that political subdivision.

The permitted exclusions are:

- (a) Any class or classes or part-time positions;
- (b) Any class or classes of elective positions;
- (c) Any class or classes or positions compensated from fees;
- (d) Positions covered by a retirement system (Note—Provision has also been made for splitting a retirement system so that some employees are covered and some not);
- (e) Agricultural labor;
- (f) Student services; and
- (g) Election officials.

Recent amendments to the Social Security laws added some technical exclusions from "wages" for certain non-work periods and also for payments to a survivor or to the estate in the year following the death of an employee which are applicable, of course, for private as well as for governmental employment. These generally are administered more effectively in the public sector simply because state administrators have a great deal of experience in making determinations as to what payments under given conditions constitute "covered wages."

It is shocking to realize that after a quarter century of operations under Section 218 the federal bureaucracy has no real comprehension of how the program operates in the public sector out on the firing line. They sit in their ivory towers—accustomed to federal operations—while knowing a little about procedures in state governments and large cities—but completely failing to understand what the real problems of state administrators are.

Prime evidence of this is the statement of the Secretaries of the Treasury and of Health, Education and Welfare in their report to the Congress on annual reporting in which they blithely state that this proposed change would be feasible for public employees because they "have sophisticated accounting and reporting techniques and are used to keeping extensive business records."

These persons ought to visit the thousands of political subdivisions—small cities, villages, townships, school districts, sanitary districts, and many other small political subdivisions—as state Social Security administrators and their staffs do repeatedly.

Throughout the nation quite extensively the official of the political subdivision responsible for preparing Social Security reports serves on a part-time basis, and often for nominal compensation. In many states such are selected on a non-partisan basis. Such persons are citizens who volunteer or are drafted for public service.

Too often after agreeing to serve they find that they did not realize the complexity of the governmental "red tape" that they encounter, and hence to a greatly increasing extent such incumbents find the duties more burdensome and more time consuming than they had realized. They find that they can ill afford to take away the time from their job, their private business, or their profession, and so either they refuse to be a candidate for another term, or they resign before the term ends.

So there is a distressing frequency of turnover in such local reporting officers. Just about the time the incumbent has learned how to handle Social Security reporting properly, he may be replaced and the state Social Security administrator must begin the education process all over.

In private enterprise there ordinarily is substantial continuity. Moreover, to the extent that there are personnel changes responsible for reporting, they ordinarily have had such exposure elsewhere, and since—except for nonprofit corporations, associations, and organizations which can qualify for the exemption in the Internal Revenue Code for such agencies—private coverage is uniform and mandatory, there is no lost motion in learning how to report. But in shifting from private to public coverage such persons often tend to report to the IRS, and when they are caught up with, they are dumbfounded at the complexity.

Actually in some cases these part-time officers function in their own place of business or professional practice, or in their home, rather than in a public building. For example, where a dairy farmer is the incumbent it has been found that there may be a telephone extension in the barn, so that the best time for the state office to conduct business with him is to telephone him at milking

time—when the clanking of the milking machine can be heard in the background.

The fact is that it has required a quarter century for state Social Security administrators to educate, cajole, and harass the reporting officials of local entities so that they comply reasonably with federal requirements.

This has been done through:

- (a) Basic employer handbooks;
- (b) Quarterly bulletins emphasizing the most common current problems;
- (c) Field representatives;
- (d) Correspondence;
- (e) Telephone calls;
- (f) Appearance on the programs of various kinds of organizations of local officials, and in the conduct of clinics connected with such programs; and
- (g) Special supplements on varying coverage issues, et cetera.

Now it is proposed to wreck all that has taken a quarter century to build up, and so state administrators would have to start over on a second quarter century of endeavoring to procure satisfactory compliance.

State administrators have been meticulous in making certain that covered wage records are reported correctly for all covered individuals. This is in distinct contrast with the IRS record in the private sector where IRS agents concentrate on collecting contributions and generally do not concern themselves with determining whether the wage record is correct.

This is astonishing since benefits are based on "wages" as reported, not on contributions which are collected. State administrators have discovered—and have corrected—too many instances where a minor discrepancy in a wage record—if allowed to persist—could have substantially reduced the benefits.

Unfortunately if chaos results from a change to annual reporting, state administrators simply will not have the staff necessary to pay attention to making certain that wage records are correct.

Thus, it is impossible to ascertain now how many persons will either lose benefits or receive incorrect benefits in the resulting confusion.

The secretaries of HIEW and Treasury in recommending a system of annual reporting state that:

"The Form OAR-S1 submitted by the states would continue to be filed quarterly with SSA, but Form OAR-S3 with detailed wage information on covered state and local employees would be eliminated."

It is not quite that simple.

The federal bureaucracy evidently fails to comprehend that under established state and local financial procedures it is absolutely impossible to pay money out of a public treasury without detailed documentation. They are accustomed to the fact that private employers can operate on an estimated basis.

Documentation is essential for disbursement of monies from public treasuries. Rather than reduce paper work, a system of annual reporting for public agencies would more likely increase the paper work necessary to reconcile the earnings records at the end of a calendar year.

As an example, we quote from a communication from one state, and repeated by many states, which make the employer payment from a special state fund for certain classes of employees:

"Another reason why this would be impossible—for teachers the employer portion of contributions is paid from a special fund and before we are permitted to request the employer tax, all reports must be in and a list attached to our letter to the budget office indicating the group, the total liability, how much paid by employee and the amount due from the employer.

"In other words our request must be legally documented and no guess work or estimate is acceptable."

To maintain control, the documentation of both employee and employer deposits would be demanded in many states whether or not special funds are involved. The control is imperative not only to satisfy demands of state and local finance offices but to be able to justify adjustments or corrections when required and to protect the state's liability both for its own employees and for the employees of its covered political subdivisions.

In the absence of documentation it would not be possible for state administrators to certify as to the correctness of OAR-S30 adjustments without an exhaustive and expensive effort. No state can be expected to pay the bill in an

alleged violation of the coverage agreement without a clear-cut justification of the obligation.

As recent as August 1974, the bureau of data processing director of the Social Security Administration expressed to the NCSSSA great concern at the current volume of adjustments of wage records under Section 218.

It could be reasonably expected that the need for corrections of omissions and of other errors in the reporting of earnings information will be increased under any annual reporting system for small governments due to the reduced stability and the lessening of controls.

A shift to more frequent remittances would very definitely result in the necessity for an increase in the number of adjustment reports—hence, more paper work.

Also to the extent that adjustment reports of wages information could be processed such would be delayed considerably longer than under quarterly reporting.

So this would substantially increase the work load of federal personnel—and naturally would increase federal operating expense.

When the resulting chaos occurs, then the entire staff of state administrators will have to concentrate on straightening out the mess so that many established procedures will have to be relaxed or abandoned.

This will mean that personnel now assigned to field and office auditing, to the design and execution and enforcement techniques, to the processing of incorrect and incomplete name and number reportings, to the various and sundry efforts to control and reduce the need for adjustments of earnings information, etc., will necessarily have to be shifted to functions which are entirely in the areas of collections. Thus, certainly there will be a general deterioration of the present standards which have been achieved after so many years and so much effort.

Most states and their political subdivisions are operating under rigid budgetary restrictions due to limited sources of revenue, while the cost of services is increasing. It will be impossible to add administrative staff at state or local levels to cope with the increased work load resulting from more frequent deposits and annual reporting.

In fact, because of a financial crisis, many states are now forced to substantially reduce personnel in an effort to avoid what has happened to New York City.

The control and correction of erroneous individual name and number information under any annual reporting scheme would be a stupendous task for each state administrator. It must be kept in mind that each state is responsible not only for personnel under its direct control whose service is covered by the program, but (in most states) on behalf, also, of a multiplicity of local governments whose activities are regulated and supervised to a very limited degree, if at all, by the state and whose personnel are not employees of the state.

Under present practice much name and number information is questioned and corrected upon the receipt of the quarterly report. The lag inflicted by annual reporting can only create more difficulty at claim time and might be the reason for failure to find the record at all. This surely should inevitably increase operational problems at Baltimore and would almost certainly increase administrative expenses in the SSA operations, hence, offsetting the alleged administrative savings hoped for under annual reporting.

The end of the year peak for a state administrator's office in the event of a shift from quarterly reporting to annual reporting is a difficult thing to contemplate. Again, it must be remembered that each state administrator is responsible not only for state personnel but also for the personnel of a multiplicity of local government employers of many types and purposes and with varying degrees of recordkeeping effectiveness or with only minimal records.

There is difficulty enough with quarterly peaks; if, instead, all of the problems are to accumulate to be uncovered once each year, the quality of the reporting is bound to deteriorate and the personnel of small government entities who need the protection the most will suffer the most because their wage records at Baltimore will be incomplete or inaccurate.

The state responsibilities cannot be compared with the responsibilities of a private industry employer with many branches. In the state and local government complex, the states does not employ the personnel of the local governments and has little if any control over local employment practice.

In the event of a shift from quarterly reporting to annual reporting probably the W-2 should be made an SSA form rather than an IRS form. In years up to the

present, state administrators have been the instigators against great odds in promoting the completion of Social Security information on the W-2 to make the statement of "wages" a true and accurate statement of "wages" reported for the record during the period covered by the statement.

Without periodic statements of "wages" to substantiate the payments of contributions, it will be difficult indeed to assure the accuracy of the W-2 statement at the end of each year, particularly on behalf of employer agencies other than the state.

The difficulties in reconciling W-2 statements of "wages" against the amounts paid in contributions will make the adjustment procedure for inaccuracies in information on "wages" not only voluminous but also complex and too long after the fact. With the rapid turnover in local reporting officials, the task for the state will be much more difficult than it has been in the past, since after the end of the year the new incumbent will not know what actually transpired and the transfer of records procedure frequently is difficult to control.

Under the annual reporting proposal there would necessarily be a loss of state control without reducing state liability for underwriting and guaranteeing the payment of contributions. This will result in greatly increased state expenditures in contributions for this program in addition to the greatly increased administrative expenses that are bound to occur. But where will those states in financial difficulties be able to find the required extra funds?

Changes in reporting officials and the tendency to make token payments with a chance to reconcile only at the end of the year would encourage omissions and inaccuracies which would have to be corrected at state expense when uncovered.

In the case of payments from public treasuries—state and local—informal procedures cannot be followed as readily as in private employment. Consequently, if monthly deposits are mandated, then each such payment from a public treasury must be justified by documentation.

So under the current system, in addition to the quarterly reports, some form of paper work will have to be instituted to accompany the monthly remittances. The degree of required detail will vary from state to state.

Because of the manifold complexities under Section 218 as heretofore outlined, it is inevitable that more adjustment reports to correct earnings records are processed than in the private sector.

Moreover, state administrators strongly believe in making corrections currently instead of waiting until a person applies for benefits because:

- (a) Too often the individual is not knowledgeable enough to realize that errors have occurred;
- (b) So much time may have elapsed that accurate records are no longer available; and
- (c) There may have been considerable turnover in reporting officials so that there is no one who remembers what actually happened.

Too often when an individual in private employment knows enough to apply for benefits, it is discovered that no wage records exists. The benefit can still be paid upon the basis of such facts as can be ascertained, but the cost is not paid out of the trust funds but instead is paid from general federal revenues.

Certainly additional paper work would be generated to determine final average earnings for a claimant for benefits if for any one year at least 18 months would elapse before the actual earnings figures are posted by the Social Security Administration. The posting lag would have to be at least 18 months; the lag under quarterly procedure is at least 6-9 months.

Hence, it is quite apparent that in the case of operations for public personnel under Section 218 of the Social Security Act, the proposed institution of annual reporting and more frequent remittances will have a far different result than can be expected under the relatively different procedures followed by the Internal Revenue Service for private employers.

Instead of reducing paper work for states and political subdivisions, the ensuing chaos must eventually produce more bureaucracy and more paper work in trying to correct the errors that will result.

It has required a quarter century to perfect the present level of enforcement for public personnel—an achievement which Social Security Administration staff members have repeatedly conceded is far superior to that which prevails in the case of private employers.

Accordingly, it is quite stupid to pursue a procrustean policy of wrecking performance under Section 218 of the Social Security Act simply to achieve the illusory goal of forcing states and political subdivisions to conform to a procedure which may be quite advantageous for private employers.

Social Security coverage for the personnel of states and their political subdivisions for constitutional reasons is voluntary under Section 218 of the Social Security Act. These provisions enable termination of coverage after 5 years upon at least 2 years notice.

Recently, throughout the nation, there has been an accelerating movement to terminate coverage and such is now under consideration in many jurisdictions. Federal personnel have indicated apprehension over these developments. Hence, it is anomalous that they should make proposals which will inevitably stimulate wholesale termination.

The movement is largely because the costs are increasing so markedly. But the chaos resulting from monthly remittances and annual reporting can well be the "straw that breaks the camel's back" and may well tip the scale in favor of termination of coverage.

Unfortunately, in many instances the terminations will occur in poor areas that find it difficult to finance essential budgets. It is these political subdivisions, frequently, where the individuals are the most in need of Social Security protection.

In private employment, stimulated by union demands, supplementary private pension plans are common. In many political subdivisions Social Security is the only protection which their personnel have.

Mr. Chairman, Members of the House Ways and Means Committee, I can assure you each and every state that has an agreement with the Secretary of Health, Education and Welfare under Section 218 of the Federal Social Security Act is opposed to the changes you are contemplating under House Bill 8057 as they affect Section 218 of the Federal Social Security Act. We can only hope that the above material will give you food for thought in your deliberations prior to passage of such a bill.

Mr. COTTER. Mr. Joseph?

Mr. JOSEPH. I prepared a paper I would hope to be included in the hearing record, and I would abstract significant portions for you.

Mr. COTTER. Without objection, they will be entered into the record. You may proceed, sir.

STATEMENT OF WILLIAM J. JOSEPH

Mr. JOSEPH. Thank you.

Social security has been with us for so long and the Social Security Administration has extolled its virtues for so long, that it is almost impossible to have a realistic discussion with most Americans about it.

Officials of the Social Security Administration talk about the trust funds as if they constituted the same kind of trust arrangement as in private insurance.

The reports made by the trustees talk about the reserves and then go on to indicate the kind of reserves which will be necessary for the operation of the program, perhaps those which would provide benefits for 1 year or some percentage thereof.

When this is found wanting, then the Social Security Administration holds that the trust funds were never intended to guarantee benefits.

The advocates of social security have argued that social security gives Americans the opportunity to save and to improve their economic security.

Yet at the same time, merely to maintain the present level of benefits will call for extraordinary increases in payroll taxes, thereby making it impossible except for the wealthy to save.

Most Americans continue to rely on social security. When our aging citizens retire, they will be rewarded for the most part with benefits which will barely keep them on the threshold of poverty.

The tax increases of the last several years were never really intended to improve the benefits of future beneficiaries, but were really designed to meet the short-term deficits of the program.

The plight of social security has now come to the attention of everyone. Yet many of our social security recipients are not even aware of the problem, because the checks continue to arrive and they continue to reflect rises in the cost of living.

The Social Security Administration continues to champion its programs, arguing that benefits will increase as taxes are increased. It continues to plan for benefit expansions, particularly in the area of medical care.

The truth about social security financing is that it is no different than any other pay-as-you-go plan where the contemplated receipts are not realized.

The result is to cut back on benefit promises, alleging that such promises was a mistake, increase taxes and also to provide other sources of revenue in order to support the program.

With respect to the benefit recommendations—in view of the plight of the system and the need to establish the program on a basis of social adequacy rather than individual equity—the recommendation for decoupling is a proper and realistic one.

The recommendation to force a test of dependency on wives and widows just because the courts have held the test for husbands and widowers as discriminatory, doesn't make such sense and is certainly politically, socially, and administratively unacceptable.

With respect to the financial recommendations, the increase in the employer's tax would fall most heavily upon small business and State and local governments.

The large employers will pass the increase on to the consumer in the price of the product and, therefore, fuel the fires of inflation.

An increase in tax will force all employers and many employee organizations to review supplemental measures of income security, because it is not likely that the economy can afford both tax increases and continued financing of such supplemental systems.

The tax should be frozen where it is. A tax rebate should be offered to those required to pay such taxes and who are at the lower end of the economic ladder.

General revenue financing is the only proper way of accounting for the future of social security.

All of us must face up to the fact that the financing of social security is nothing more than the present working generation paying the benefits for the current retired population.

When we finally appreciate that, then social security can take its place among all other expenditures of the Government on behalf of its citizens, right along with education, defense, public health, et cetera.

In fact, no administration can claim that it has balanced the budget unless it has first adequately provided for the budgeting of social security costs, just as it would for any other national expenditure.

It is only in this way that the regressive social security tax, which bears most heavily upon the poor and middle class, can be contained or eventually eliminated in favor of progressive taxation.

We are, therefore, opposed to any proposal which would increase the employer or the employee share of the social security tax.

We favor general revenue financing and we believe that the administration's proposal in this area is much too limited.

It is time that Government, as is the case in most social insurance programs abroad, share equally with employers and employees in the financing of social security.

Otherwise, the Social Security Administration and its proponents will look upon the current financial problem as a temporary one—one in which benefits have to be cut back and plans for expansion curtailed because of the economic problems of the country, the drop in the birth rate, et cetera.

What I am arguing is that this goes to the heart of the future of this country. Are we going to recognize that there are limits beyond which Government cannot go in attempting to provide for its citizens and that there are programs which such citizens would like to adopt and to finance on their own, independent of Government interference.

This is the reason why we view the administration's proposals as being set in no particular direction, whereas we are asking the Congress to set a course which will recognize all of the needs of our aging Americans and yet permit the rest of us to escape the crush of the regressive tax and permit us to work out supplemental plans for our own security.

[The prepared statement follows:]

STATEMENT OF WILLIAM J. JOSEPH, DIRECTOR, NEW JERSEY DIVISION OF
PENSIONS—FINANCING SOCIAL SECURITY

INTRODUCTION

The premise of this paper is that this Congress will shortly be deciding the future of Social Security and perhaps as a result, chart a course of collective security which had had no committed direction in the past. Some may look upon the deficit posture of the Social Security program as due to a series of unforeseen events, which can correct themselves or can be corrected. For our part, we believe the current dilemma was clearly predictable and was formulated at the birth of our social insurance programs. While we make no effort to provide an elaborate historical thesis, we do wish to raise those ideas and those events which have brought us here.

There are a number of issues which have affected the financing of the Social Security program and foremost is the traditional question as to whether Social Security is insurance. We raise it because it is fundamental to the thinking of our fellow citizens—not because it truly reflects upon the Social Security program.

Private insurance is normally based on the equity concept. This doesn't mean that each individual always gets back his money and interest as might be the case if his money were deposited in a savings bank. However, policyholders in the same area of risk will pay the same amount for the same benefit. While the premiums may be the same, the benefits received will vary considerably among the selected groups of presumably identical risks. Using the obvious case of life insurance, someone in the group will die early while others will die after many years of paying premiums. (1)

Like private insurance, social insurance serves as a method of distributing costs, of meeting economic risks of a large number of people over periods of time appropriate to the particular hazard. Unlike private insurance it is generally compulsory, which ensures normal distribution and should reduce costs. The same advantages are cited for private group insurance. (2) In social insurance the cost falls only partly on the insured, as employers or government or both meet a large part of such cost. (3) In a social insurance program, individual equity must give way to social adequacy. (4) If a program was begun on the basis of individual equity, benefits would be relatively small in the beginning and many years would lapse before the system could provide the benefits for which it was established. Thus, in actual operation social insurance differs widely from the accepted practices of life and other forms of private insurance. (5)

In private insurance there is a contractual right; social insurance makes no such provision. It may be a statutory right but the statute can be changed. Private insurance must be funded if the rights of the policyholders are to be protected. Social insurance may not be funded at all, depending on the nature of the plan. Essentially, social insurance provides for a recognition of a problem confronting society and through the benefit structure and financing mechanism, the economic burden on society is reduced. (6)

One of the apparent differences between social and private insurances deals with the conditions of benefit payments. In private insurance the insured designates the beneficiary and the beneficiary has a right to collect the benefits. In social insurance only specific survivors are considered and only for a period of time when they meet the statutory conditions. For example, a widow's benefit would be terminated if she remarries; children are only eligible up to a certain age, and cannot receive benefits unless they are dependents, etc.

Lord Beveridge defined social insurance as providing cash payments conditioned upon compulsory contributions for the insured person, regardless of his resources at the time of the claim. (7) Since this eliminates need as a prerequisite, the principle of social insurance made an important contribution to western society in widening the scope of the plan. It is not a welfare plan only for the poor, but it covers most workers. (8) Of course, the most important consideration is that it is designed to protect the worker against those recognized catastrophes which plague our industrial society. (9) Usually it is adopted at a time when only government can act since the other resources of assistance have dried up. As such Social Security is not an experiment but it is a true institution of security. (10) However, that doesn't mean that Social Security is insurance. The purchase of private insurance involves the distribution of the possible burden or actual loss upon persons who are willing to pay premiums for that purpose. In social insurance government acts to eliminate the uncertainty and in compulsion forces the payment of the premium. (11) Social Security does not terminate coverage because an individual is unemployed and his participation lapses. As an institution, social insurance contains many of the objectives formerly ascribed to philanthropy. (12) Yet unlike charity, the means test is eliminated and it then becomes possible to persuade potential beneficiaries that there was nothing wrong in accepting benefits. (13) In fact, in this sense the term "insurance" indeed performed a very useful, social function. (14)

Actually, this longtime argument about whether Social Security is insurance is a relatively academic one because it has been long resolved in law. In 1960 the Supreme Court held in the *Nestor* case that the system was not insurance. The court said that the covered employee had a noncontractual interest and that this could not be analogized to that of an annuity holder based on contractual premium payments. (15)

The most important consideration is that through the means of social insurance the burden does not fall directly upon the individuals, but places it upon groups where it may be more readily borne. (16) Thus, the relative economic position of the last several generations of Americans has been altered by Social Security through its plan of benefits and taxes. The net effect is to raise those in the lowest income brackets. (17) Such efforts are not restricted to Social Security. Through the payment of individual and corporate income taxes, public education has been raising the position of the poor for many decades. Of course, the effect of such benefits and taxes are modified by the differences between individuals, family size, health and the opportunity for direct and indirect benefits. There are many transfers of income in both public and private areas. Insurance payments, private or social, are certainly a form of transfer, subsidy or charity. (18) The only difference is a matter of degree or purpose. (19)

The United States adopted Social Security on the insurance principle, resting on the theory that this would avoid the appearance of giving people something for nothing. The difficulty is that we have lost sight of the difference between the appearance and the reality. (20) Over the years the media has exaggerated the differences between our social insurance programs and those abroad. The basic ingredients are the same. It is work related. There is no means test. It is contributory. It is compulsory and the rights of participants are defined in the statute. (21) Thus, on the surface the appearance is that workers and their employers pay taxes and, therefore, the benefits are considered to be "earned." They belong to the employee by right and are not bestowed as an act of charity. Yet, this is a mixture of fact and fiction. Certainly the program has become more

social and less insurance, chiefly as a result of liberalizations to seal gaps in assistance programs. These measures have proven costly and they may threaten the more basic objectives of the program. (22)

Essentially, Social Security represents a pragmatic way of providing for parents and grandparents. One of its greater advantages lies in its very financing. Unlike philanthropy and other voluntary means, social insurance provides an effective method of raising money to finance worthwhile welfare programs. (23) Yet, Americans seem concerned about the actuarial soundness of the program and over the years have long debated as to whether it is really insurance. (24)

ISSUES

There are five specific considerations which run throughout the history of any social insurance program and in terms of Social Security they are as follows:

1. Level of income replacement

The early proponents of social insurance always held that Social Security would end the need for welfare or public assistance programs. The difficulty is that there will always be members of our population with little or no income and who are in need of assistance. Such individuals are women who never worked in covered employment and as housewives are not insured. They include the disabled who could not meet the eligibility requirements. Moreover, under social insurance, benefits are based on past earnings. If the base earnings were inadequate or there was no coverage, the benefits are going to be inadequate or nonexistent. Thus, despite substantial increases in social insurance benefits, there are many Americans who are still poor and who need assistance and who will never meet the test of insurance. An alternative would be to qualify every household even though there is no breadwinner, eliminate the age or disability tests and base benefits on need. (25) Perhaps a government subsidy would not only secure the program in terms of its present deficit, but also provide benefit increases where need can be demonstrated. (26)

Even for those who are covered, cash benefits admittedly provide only a small part of the requirements of many in the population. Such needs include housing, food, education, medical care, etc. We are often told that the problems of the poor in this country stem from these needs and that with the resolution of such problems the war against poverty might be won. But Social Security does not provide for such needs. It provides cash benefits. (27) This is not to say that the other areas have been neglected. With Medicare we had Medicaid in 1965; food stamps is a major on-going program; housing has been subsidized; there are rent supplements; educational opportunities have been opened to the young; a number of free or supported services have been provided, such as day care, legal aid, training, etc. (28) Yet for those who are covered and who are receiving cash benefits, are such benefits adequate?

It appears that Social Security does not permit most of its recipients to raise themselves beyond the poverty level. Most aging beneficiaries depend on the program as their sole or most important means of support. Thus all of the contributions in the past and increasing contributions in the future will not permit millions of beneficiaries to escape poverty. (29) The ideal would be to raise the level of income replacement in order to make it possible for the retired employee to maintain much of the same economic status that he had during his working life. Most authorities agree that almost all income groups expect that retirement income will be somewhat lower than earlier income levels. (30) The difficulty is that the expectations have been materially decreased as a result of inflation.

In this country we have been able to supplement Social Security for many Americans with private insurance and pension plans. However, we have lost the virtue of thrift. In fact, it would appear that the reliance on social insurance and other collective security measures has weakened the incentive to save. Research has revealed that in the case of middle and low-income families, Social Security is a complete substitute for a substantial rate of saving. (31) While one author may fear that government programs can enslave the individual, we believe that Social Security is here to stay. (32) It has a great burden to sustain. If the future of Social Security depends on adequate financing and this cannot be met by the present tax arrangement, another method must be found. (33)

2. Gaps in coverage

There are many gaps in the Social Security program in this country. We previously noted the plight of housewives—hence the suggestion to provide benefits on the same basis as their domestic employees. Another historical difference between our social insurance programs and those abroad involves most disabilities. Aside from the few states where temporary disability benefits are provided, social insurance programs do not now cover accidents or illnesses which are unrelated to work. (34)

In view of all of the liberalizations in benefits over the years, perhaps the reason for the continuing gaps in these programs may be that the potential beneficiaries are not willing to pay the increased contributions, preferring to spend the money on other things. (35) Federal and some other public employees have retained the privileges of their own retirement systems. They may venture into Social Security as a means of supplementing such other benefits. As Social Security qualifications for benefits have never matured, this has led to double dipping. Thus the plan is plagued by the lack of universal coverage on one hand and by selection against the plan on the other. If the program was financed out of general revenues, these gaps would certainly be eliminated and selection minimized.

3. Relationship of benefits and wages

Establishing the Social Security program on the insurance principle required a distinct relationship between covered wages and earned benefits. Like their counterparts in private insurance, the Federal Government was required to establish a very elaborate machinery for the reporting and crediting of wages and service in order to determine if the employee was insured at the time a claim was filed. Yet there are many features of Social Security which are unrelated to wages and the taxes paid. Benefits are heavily weighted in favor of low income earnings and even today, after 40 years of operation, a person can qualify for benefits meeting minimum requirements. Thus while the system was established on an insurance principle, the program itself has a welfare bias. (36)

As the program has been altered successfully throughout the years, deemphasizing individual equity and promoting social adequacy, it would seem to us that the extraordinary machinery of Social Security accounting is completely unnecessary. (37) Perhaps this is the price which we Americans must pay for a heritage of individualism. In the past we have always presumed that men with greater skill and higher earnings should be entitled to better benefits than men with less skill and lower earnings. The result, of course, is that benefits are higher to those who are regularly employed in contrast to those who have interrupted employment due to illness, unemployment, etc. (38) It is this very individualism which operates in the area of adjusting benefits due to inflation. If benefits are not increased, then the scale of differences in benefits would narrow between beneficiaries. As Social Security is a wage-related program the effort has been to avoid such narrowing. Yet there is a contradiction, because the same advocates of a wage-related social insurance plan are also opposed to general revenue financing. On that score they argue that as a result of such financing, the government would not be constrained by the resources of a dedicated tax and could raise benefits which might provide more benefits for higher-paid workers than for others. (39)

4. Means test

Social insurance does not abide with the means test and as a result does not meet many of the needs of the covered population. However, the benefits are available even if beneficiaries have some earnings. This is in contrast to welfare where benefits are increasingly denied in those cases where the individual may not have any earnings but can work.

If the welfare recipient finds employment, he is singled out as taking jobs away from more entrenched groups of workers and he finds that the assistance he was receiving is drastically altered. Earnings serve to reduce benefits. We are all familiar with the problem of disincentives in the welfare programs where a father with a full-time job must leave his family so that they can continue to be eligible for assistance. (40)) However, we insist on continuing this differentiation between social insurance and assistance. One approach to meet the needs of the covered population was the implementation of a Supplemental Security Income program. This was designed to provide an income floor for the aged, blind, and disabled recipients at the lower end of the Social Security benefit schedule. Of course these individuals are not in the mainstream of middle class America for

which the Social Security program is designed. This is true of other programs. For example, unemployment insurance is not really intended to help the chronically unemployed, but rather to provide benefits to persons with regular work histories who suffer temporary periods of unemployment. (41)

The pronouncement against a means test could be heralded in periods of prosperity and economic growth, all supportive of an expanding Social Security program. In periods of economic stability or even decline, it might be necessary to look at the means test again. The fiction of Social Security should not be permitted to blind the Congress from the realities of the Social Security burden. This burden will not be altered, whether the additional financing is met through increased dedicated taxes or general revenues.

5. *Social adequacy*

Two examples of social adequacy in the benefit structure involve disability benefits and the earnings test. When the financing problem was not fully appreciated, Congress was pressed to liberalize benefits. Disability benefits have always been advanced. (42) Like age, disablement forces workers to premature retirement. (43) There was the disability benefit provided by private pension plans which served as a model. The usual waiting period in private plans is for six months before long-term disability benefits are to be paid and the criteria usually is that the individual is permanently and totally disabled to perform his regular job; after review for a period of years, he continues to receive his benefits if he is still disabled and can perform no productive work.

Initially Congress adopted a disability program modeled after this long-term practice in industry. However, in the 1965 Amendments, it modified the definition of disability so that a person could qualify if his impairment could be expected to last at least twelve months. (44) The previous requirement was that the disability was expected to be of long-continued and indefinite duration. (45) Under the program the impairment must be such that the individual is unable to engage in any kind of substantial work which exists in the immediate area in which he lives or whether a job vacancy exists or whether he would be hired if he applied for work. (46) On one hand, therefore, the practice in industry is initially somewhat more generous since the individual is normally permitted benefits if he no longer can perform his regular job. It is only subsequently that he must meet the test of not being able to perform any gainful work. On the other hand, the definition of disability in Social Security determines permanency on the basis of a disablement which would last at least a year, whereas most pension plans require permanent and total disability. (47)

In 1973 Congress approved a reduction in the waiting period from six months to five months. As a result demands were heard throughout the country for similar changes in the waiting period of private plans. Thus Congress which initially followed an industrywide practice, reasonably structured to meet the needs of a social insurance plan, was now becoming a trendsetter. Most companies usually provide temporary disability benefits for a period of the first 26 weeks, so that benefits provided at any time during the 6-month period would constitute a duplication. Another duplication involved Workmen's Compensation laws in all cases of total disability, temporary or permanent, which would last at least six months. Employees became eligible for a combination of benefits and in some cases were provided with more tax-free income than their net take-home pay when they were working. The reduction in the waiting period was taken despite the 1949 Report of the Ways and Means Committee, which stipulated that the payment of disability benefits should not restrict or interfere with Workmen's Compensation and that there should be safeguards against unwarranted duplication. (48)

Going further one could argue that if the trend continued, Social Security would begin to replace temporary disability benefits now provided in industry. As the work test for disability benefits under Social Security differed from the industry model, the structure of disability benefits for all Americans would change and perhaps not for the better. (49) Another example has been the earnings test. It was not as controversial in the early history of Social Security because the public then appreciated that age 65 was a reasonable retirement age and they hardly could expect to receive benefits while they continued employment. On the other hand, age 65 is no longer as valid in terms of current mortality, and as a result of inflation, the need for adequate income and the desire to maintain the living standard as a retired person comparable to that enjoyed as a worker, has led the public to demand the elimination or modification of the test. With respect to mortality, the Congress actually went the other

way. It provided benefits at early ages—at age 60 or 62. Thus the aging were presented with inadequate Social Security benefits at earlier ages and with inflation found they had to return to employment in order to maintain themselves. Why was the retirement age lowered?

We appreciate that benefits could be reduced actuarially so that there would be no loss to the system, but it does provide extremely low benefits. Some persons must work while others with benefits based on higher wage levels have no incentive to work. With the increase in mortality the obvious answer would be to increase the retirement age from 65 to something greater. Perhaps the retirement age was decreased in order to remove aging persons from payrolls and replace them with younger contemporaries who were having difficulty finding positions. Our concern, however, is that with the demand to eliminate the earnings test, we again find the aging holding that Social Security benefits should be paid as a right. Certainly if Social Security is a contractual right, then the earnings test and many other features of the program should be modified. Perhaps the aging should be given an incentive to continue work beyond age 65, by providing them with larger benefits. Such an incentive might be superior to any modification of the earnings test. (50)

Actually the earnings test has been already modified to provide benefits at age 72. (51) As a consequence, the aging have been encouraged to seek its further modification. Little is mentioned, however, by our senior citizens about the financing of the program and what such implications would be upon the working population.

We have cited these examples as illustrative of meeting the need for social adequacy in programs established ostensibly on the insurance principle. Actually it was almost at the very beginning of the Social Security program that its requirements were materially altered. Initially Social Security was to provide benefits on the basis of accumulative lifetime earnings, but in 1939 this was changed so that benefits would be computed on average monthly earnings. The change made it possible to immediately provide more adequate benefits. At the same time the program, which began on the basis of providing benefits only for workers, was enlarged to provide additional benefits to dependents and survivors. Thus the benefit and financing requirements were drastically altered as a result of these major changes in the concept of the program. (52) Social Security took substantial steps towards a welfare design rather than one involving individual equities. Larger benefits would be provided to married people rather than to those who were single or without children. More benefits were payable to larger families than to those with a smaller number of dependents. Over the years the scope of family participation has increased, adding dependent husbands as early as 1950, widows age 62 in 1956, children between the ages of 18 and 21 who were full-time students in 1965, divorced aged wives in 1964, students up to age 22 in 1972, and dependent grandchildren in 1972. Benefit amounts were also increased for the dependent and aged parent and for the surviving children. The aged widow now receives 100 percent of what her former husband would have been eligible to receive. (53) Thus while taxes do not vary by the number of dependents, Social Security benefits do. (54)

In short, benefit schedules have been continuously revised in the direction of emphasizing need at the expense of equity. Minimum benefits have been raised proportionately more than average benefits have been. We believe this was due to the favorable experience of the program, a program which was well received by a population which could support such increasing payments and permit retired as well as active workers to share in the gains from an increasing productivity. (55)

The dire predictions that liberalizations in Social Security would drive out competition from industry did not materialize. (56) Changes in Social Security were paralleled by even greater developments in the private sector. However, the picture was not completely rosy. As the birthrate decreased and as the economy stagnated, it would be clear that there would be a funding crisis in the future. (57) The inequities of Social Security were not removed but may have been actually increased. The poor were hardest hit. A person who has adequate investment income and a private pension can receive his Social Security payments in full. If someone is poor enough to have to work in order to supplement his Social Security benefits, he loses that income or that benefit. He is not eligible for Medicaid. In fact, he is required to pay the Part B cost of Federal Medicare, which only serves to reduce his Social Security benefits. (58) The Supplemental Security Income program was designed to decrease the demand for higher minimum benefits. (59) While the pressure has not been relieved because of inflation,

the result has worked to the disadvantage of the aged, blind, and disabled persons who do pay Social Security taxes. Many are receiving an SSI check as a supplement to their Social Security benefit. As there is a dollar for dollar reduction in the SSI check, the value of Social Security is limited to someone who is entitled to both, and his income cannot exceed that of an SSI recipient who never paid any taxes. (60)

FINANCIAL STRUCTURE

We have noted some of the influences affecting Social Security. It has long departed from an insurance scheme to one with definite welfare attributes. Yet the financing has remained chiefly aloof from these developments and it is only the current crisis which forces us to reconsider the financing arrangement.

In most pension plans a fund or reserve is established if the cost is met by a level contribution rate. Such level rate presumably has been established sufficient to meet the cost of the program over a period of time. As benefits are likely to rise, the initial contribution will meet the cash needs of the plan and leave a remainder constituting the fund or reserve. The reserve could be larger or smaller depending on the nature of the population, any prior service recognition to those already eligible, the basing of benefits on a greater or lesser degree on the length of time that contributions were made, etc. (61) An alternative to a level contribution is a schedule providing for a lower rate in the earlier years and increases in the future. Normally, the final rate under such a schedule will be higher than the level rate over the same period of time. The size of the reserve will depend on how the schedule fits the cash needs of the plan.

In the extreme, if the schedule started out very low and rose very slowly, no fund might be developed. Under such a program contributions are determined in a manner to equal the estimated benefit payments and is really a form of financing on a pay-as-you-go basis.

If there are no benefit commitments, contributions can vary from year to year with benefits proportionate to what was received. Another alternative is to initially have higher contribution rates in early years and lower ones in the future. This is more like the pension plan which is actuarially determined and where prior service credit is awarded. The result is a much larger fund than one in which a level rate may have been used. The larger contribution normally is associated with the payment of an accrued liability for prior service. Once the debt is paid, lower contributions may be possible. ERISA calls for such scheduled financing so that many plans require increased contributions from employers, which many did not contemplate before such Federal legislation.

The Social Security program has always been financed on a pay-as-you-go basis. The reserves have increased or decreased, but normally cover only about a year of benefit payments and now even that level has decreased. Whenever it appeared that there may be an opportunity for a large accumulation, legislation followed providing new benefits and new taxes. Before new contemplated surpluses were achieved, benefits were again liberalized and the cycle was repeated. (62) Thus, the financial soundness of the Social Security program does not rely on any trust fund, but rather on the government's power of taxation and its ability to collect sufficient taxes. Actually, Social Security has been promoted by the current generation of workers paying the cost of benefits for the prior generation. In the past the economy has expanded so that taxes have risen fast enough in order to permit retired persons to share in the growth and in the gain of productivity. Yet even with this extraordinary growth taxes have been increased many times. As the work force is curtailed in relation to the population of retired persons, the current generation of workers will have to pay an ever increasing tax or the system must be financed in some other manner. (63)

The increase in contribution rate is a particular problem in the case of social insurance systems because the employee's tax may be higher than that which would be required in order to meet the cost of his ultimate benefit. This is why insurance companies can frequently demonstrate to younger people that for the same contribution to Social Security, an annuity policy might result in much larger payments. The comparison does not contain provision for benefits payable to the employee's parents. Thus, one of the disadvantages of having a rate which is increasing is that for those who retired in the early years the contribution was less for the benefits they have been receiving. Even with a level rate, those who retired years ago may receive far more in benefits than the contributions would have purchased on an actuarial basis. The result is windfall benefits. There is nothing remarkable about such windfall, as the same thing happens at the beginning of a private pension plan and the award of prior service

credit paid for by the employer rather than the employee. Otherwise inadequate pensions would be provided in the early years of any plan and the plan thus would not really serve its intended purpose. (64) The difficulty arises in answering the moral argument where the worker has given up part of his earnings to support the aging and then holds that he, therefore, has a claim upon future workers.

Is an employee contribution necessary? One author holds that such contributions were never essential for the establishment of social insurance programs. (65) Lloyd George held that contributions were necessary because as long as you have taxes upon a commodity which is consumed, the worker contributes on the basis of what he buys and what he has provided as a result of his labor. (66) Yet the historical background for Social Security taxes was never really a matter of economics. Franklin Roosevelt is quoted as saying that the payroll tax was designed to give the contributors a right to collect their pensions. (67) To the employer the tax may not be another insurance premium, but he adds it to the cost of doing business in the same way as he would add any excise tax. (68)

Social Security has been described as a system of redistributing or transferring income. If the system is financed from general revenue by the proceeds of progressive taxes, it is a transfer from the rich to the poor. The lower income group pays less in taxes and receives more in benefits. When the range of income among the potential beneficiaries is narrower, the money for Social Security comes from the same class who will benefit. Even the aging are supported by contributions of employees who work but who come from their own class. The cost is borne by a population composed of potential beneficiaries with the risks pooled among them. (69)

The financing has had its critics. One writer holds that the trust funds were never in trust for those who paid the taxes. He holds that they constitute nothing more than a "slush fund" enabling Congress to buy votes by promising to give away more than the funds ever held. (70) Certainly, the facts seem to indicate that everytime there was a question about the size of the trust fund, it was concluded a smaller balance could be maintained while benefits were being raised to meet the cost of living. Taxes would rise with the increase in the average wage and since such wages traditionally rose faster than the cost of living, it was expected that there always would be enough money to provide the benefits on a short-term basis. Meanwhile, the taxes would increase automatically. With the decrease in the working population and the downturn in the economy, the cost of living began to rise faster, while the automatic income to the system proportionately diminished.

There are mixed attitudes about Social Security even among the experts. One economist, Paul Samuelson, argues that because of the growth of population and the economic strength of the country, Social Security will continue to provide windfall benefits for future generations so that the benefits will far exceed anything the recipient has paid. (71) A contrasting view from Milton Friedman holds that Social Security requires a highly regressive tax, providing benefits indiscriminately and probably results in a redistribution of wealth from lower to higher income groups. (72) Yet everybody would agree that Social Security is an accepted program among the American people and that they have great difficulty in recognizing any of its demerits. However, in more recent times the public has become aware that the Social Security tax is taking a larger part of their income. During the late energy crisis it was noted that there was a 51 percent rise in the cost of gasoline and an 80 percent rise in the cost of heating oil, but that the Social Security tax increased 121 percent. (73)

The fact is that the tax is regressive. It falls most heavily upon low income workers. (74) If the Social Security rates are to be materially increased, the tax can then only become more regressive. If a heavier proportion is placed upon employers, would not the result be to delimit the further growth of private pensions and similar programs and would not employers begin to make every effort to cut back on those plans which have already been adopted? Would not the expectations of millions of Americans whose union representatives bargained for such plans, never be realized? At the same time that Congress is mandating minimum standards for pensions and similar benefit programs, all requiring increases in the cost of such plans, can it contemplate any further employee and employer outlays for Social Security?

The President and the Congress seem eager to adopt a National Health Insurance plan. Even if the ultimate plan is merely to exchange private expenditures for public ones, there must undoubtedly be additional cost if only because of

the establishment of minimum cost and quality controls. How is that additional expenditure going to be met if the Social Security tax is also to be increased?

We do not believe that the public is going to be easily reassured as they have been in the past. Whenever taxes have been increased, the Social Security Administration has announced that the benefits are also increasing. Such statements were always misleading because the benefits were certainly not going up as readily or in any proportion to any tax increase. In fact, most of the increases in tax since 1972 have gone to provide for the deficit in the benefits payable to current beneficiaries. Even at that, the system now faces bankruptcy. While most Americans are aware of the needs of their parents and grandparents, there is increasing unhappiness among workers who are finding great difficulty in making ends meet. They are especially concerned when they see the elderly voting in blocks and being advised to do so by the political leadership. They are concerned when the elderly talk about their rights. They are concerned with the nature of Social Security, not only for the elderly but for themselves. Increasingly they are beginning to challenge the Social Security myth.

Thus we have two issues. The first is the public's misunderstanding of Social Security and perhaps its misrepresentation by the Social Security Administration. Calling it an insurance plan doesn't make it so. In fact, by doing so it may have restricted the opportunity for benefit and eligibility liberalizations. (75) The second issue involves the financing. Perhaps the most honest and revealing statement came during a 1974 interview in which optional enrollment was discussed. The Social Security Commissioner said that such option would impair the benefits promised to those who had retired. (76)

As we view the recommendations of the President, we note that he deals with both of these issues—benefits as well as taxes. While the financing issue may be the most critical, the future of Social Security can best be determined by looking at both problems. Can we maintain public and private programs, particularly when the public one has been understating its liabilities for years and now must be rescued? As Americans are not going to turn their back upon the aging and the needy in the population, perhaps one solution would be to lower the contribution rate or to freeze it and to make up the difference in the form of a government subsidy. This is true in many social insurance plans abroad where the cost is divided between the government, the employer, and the employee and where social adequacy then is legitimately portrayed in the financing.

GENERAL REVENUE FINANCING

The Committee on Economic Security was not unanimous in the decision to finance the Social Security program on the basis of a dedicated tax. Hopkins proposed that any citizen, on proof of unemployment, old age or ill health, regardless of need, could receive payments from the Government. The cost would be met by general tax revenues. There would be no insurance fund to which the qualifying citizen had paid a premium in the form of a tax. (77) However, the general premise of Social Security financing was to have the cost divided between beneficiaries and their employers while linking benefits to contributions. (78) Of course, the notion of paying for benefits is derived from private insurance. The self financing scheme is the basis not only of Social Security but of many similar programs. In fact, in Workmen's Compensation, the oldest of our social insurance plans, the analogy is so close that in many states employers insure with private companies. (79) However, as Social Security is not a true insurance plan and as it has been modified ever since 1939 in the direction of social adequacy rather than individual equity, is this not therefore the time to recognize what has been apparent for many years?

Years ago the use of general revenues was opposed on the basis that the program did not cover most Americans. That's not true today. It is available to almost all workers. Since coverage is almost universal, excepting for those who have elected not to participate, financing can be borne by all taxpayers and not only those in the work force. In fact on behalf of those not covered by Social Security, general revenues are used to meet their retirement needs. This is the source of monies payable to the Federal Retirement System, to state and local retirement systems of public employees, to the people in the military with their own pension plans, etc. General revenue is used to provide benefits to those not eligible for Social Security or whose Social Security benefits are inadequate. (80)

On this issue of a government subsidy there is a blurring of traditional liberal and conservative sides. Liberals fear subsidy because they believe in the insur-

ance principle, hate the means test and desire to have Social Security continue to be considered as a right. Conservatives believe the insurance principle is a sham, that a means test is warranted, but that Government subsidy would constitute a blank check to liberalizations. (81) The liberal believes that Social Security should not only represent a floor of protection for the average American, but it should be increased as private pension plans do not adequately cover most of the unfortunate or needy in the population. Conservatives would like to have Social Security benefits restricted, to afford the opportunity for supplemental private programs enhancing thrift and reducing the size of the government's commitment. General revenue financing is particularly opposed by the insurance industry because of the fear of run-away benefit changes which will invade its sphere of operation. The insurance industry would prefer to have government continue in those areas which are not profitable, such as welfare, public health, etc. (82) We don't believe that anyone would want to destroy Social Security as a mechanism for meeting the problems of our urban society, where resources must be pooled during the active working careers for payments of benefits when earnings cease.

Those of us who support general revenue financing have been attacked on the basis that we favor government subsidy because of the difficulty of increasing payroll taxes. Yet payroll taxes have increased from 1 percent of \$3,000 to nearly 6 percent of a wage level which is appropriate to most middle class Americans, and where increasing the wage level to include all wages would not materially increase contributions sufficiently to meet the short-term deficit of the program. In the past there have always been arguments against government subsidy on the grounds that this would raise benefits without making the public aware of the increasing cost. (83) Yet benefits have been increased and the public is fully aware of the larger outlay required of Social Security. In fact, in many cases it represents a larger outlay than the income tax the taxpayer is required to pay. Those who fear government subsidy hold that it would weaken the cost control elements of the program. Yet benefits have been increased without much cost consideration even though the financing is met by direct payroll taxes. We feel that the Congress will act responsibly in the area of benefits regardless of the source of income available to the Social Security program.

ADMINISTRATION'S PROPOSALS

Included are (1) employer contributions on the basis of the total payroll; (2) employee contributions on a slightly higher wage base; (3) additional increases in the tax rate in 1985 and 1990; (4) higher tax rates for self-employed; (5) general revenue financing for the next five years if unemployment is over 6 percent; (6) decoupling of the system so that benefits to a future retiree do not reflect CPI increases over the working career, but continue to reflect national wage increases; and (7) requiring relatives to meet a test of dependency on the spouse in order to qualify for dependent or survivor benefits.

The Administration's recommendations are to meet the short-term and long-term deficits. Such are reflected in the report issued by the Senate Committee on Finance of June 1977. It indicates that over the long-term actuarial costs, taxes now provide 10.99 percent of salary while benefits average 19.19 percent of taxable salary, leaving a deficit of 8.20 percent. We understand that these are the median figures supplied by the Social Security Administration. Actually a more optimistic long-range forecast would make the annual cost 14.87 percent of payroll, while a more pessimistic one would make it 27.08 percent. In the short term the estimate is that the OSI program will run out of money before 1983 and that the DI program will be done in 1979. These are estimates supplied by the Social Security Administration and while that organization may have been optimistic in the past, it would seem that these figures reflect a pessimism which was always warranted in a program affecting the fortunes of so many people.

The Administration's proposal regarding decoupling has been long awaited. The double reflection of the rise in the cost of living, in both benefits payable to present beneficiaries as well as those to be paid in the future, is now considered to be a mistake. Admittedly it was an error in the period of substantial inflation. But was it really a mistake? We don't think so. We believe that the Social Security Administration overreached itself in attempting to juggle the benefit structure between individual equity and social adequacy. While minimum benefits would rise as the CPI increases are reflected in the disbursement, the gap between such minimum benefits and those payable to future beneficiaries

would narrow. Thus the Social Security Administration really hoped to widen the benefit structure, expecting the major increases in taxes to establish a pattern for meeting the cost of such substantially higher level of benefits. With the increase in taxes, spending in the private sector would level off and Social Security would no longer be just a floor of protection, but become the primary pension plan of all Americans. This expectation was only defeated by inflation and the deteriorating financial support for the program. As decoupling will be followed by wage indexing, the Administration hopes to maintain Social Security benefits as a percentage of the replacement of former salary at about the current level.

The other benefit proposal of the Administration involves establishing a condition for dependency. This largely stems from recent Supreme Court decisions holding that husbands and widowers are to be eligible to qualify for benefits on the same basis as wives and widows. (84) The suggestion to require everyone to meet a test of dependency is one which is offered up but which Congress is bound to reject. It is not likely that Congress will make it more difficult for widows to receive benefits, just because the courts have made it easier for widowers to receive them. On the contrary, on the first occasion that a widow or a wife is rejected for benefits the change recommended by the Administration would be immediately reconsidered.

We are therefore left with the five items of financial changes and here is where we believe the Congress has an opportunity to make a vital contribution to the direction in which this country is moving. If we continue to tax and tax, supplemental private sources of income security will surely be eliminated. Increasing the payroll tax makes it possible only for the wealthy to continue to save; increasing the wage base prevents the middle class from saving. The poor cannot save because their Social Security taxes exceed anything else that they are required to pay for governmental services. Increasing taxes will also continue the Social Security myth in which the aging believe, that upon retirement, they will receive a benefit based on their tax contributions and those of their employer. Yet the very taxes that are specified in the Administration's proposals, more honestly presented than in the past, convey that these are intended to ensure the benefit payments to those who are already retired, and to meet the short-term deficits.

The suggestion to increase employer contributions would fall most grievously upon small businesses and state and local governments participating in the program. The large employers would merely pass on the cost of the tax in the product sold to consumers, fueling the fires of inflation. Perhaps the Administration believes that it can jawbone large employers from passing the additional cost on to the consumer.

In the case of public employment, with which we have some expertise, the tax would work as a reverse revenue sharing operation. More revenue would be required so that state and local governments could afford to pay the tax. While there is no immediate increases contemplated for employees, there are small bites which are to be taken in the future. In the Secretary's statement, (85) he indicates that by taxing employers and not employees, revenues are raised without raising benefit levels. Thus Mr. Califano continues to be wedded to the same benefit-wage relationship which has resulted in poverty for so many Social Security recipients. Not content at that, he goes on to note while this involves a substantial increase to employers, the increase is less than what they would pay under a more conventional approach in which both taxes and wages were raised. We don't believe that argument is going to encourage employers to support the program. The Secretary must know that the economy is not in such a favorable position that increased taxes and wage levels could be advanced at this time; otherwise the traditional approach would have been followed.

Which brings us to the proposal of general revenue financing. As the Secretary indicates, such financing was considered at the very beginning of the plan and was recommended on several occasions. Congress even passed legislation permitting the use of such general revenues to meet any Social Security deficit. Billions of dollars are already coming from general tax sources to provide minimum benefits payable to certain beneficiaries and to pay for the cost of Part B coverage under Federal Medicare. If we fault the Administration's proposal, it is only because it takes a middle position. We believe it is too timid in the area of general revenue financing and that any consideration of tax increases paid by employers and employees should be shelved and permanently so. The

tax is already at a level which makes it an economic disincentive for the economy. It is a regressive tax and as such bears most heavily upon the poor. If it cannot be eliminated, then certainly it should be frozen. We suggest that the employee's share of the tax should be eliminated at the bottom level of the economic order in the form of a tax rebate. The deficit in Social Security doesn't really exist unless the American people are not prepared to pay for their parents and grandparents. We are confident that they are prepared to do so and they should do so on the basis of progressive taxation, wherever possible.

After all, Social Security is only one other program among many that the Federal government is pursuing on behalf of its citizens and should take its place in the proper budgeting of Federal expenditures. It is certainly as critical as defense expenditures or the cost of education, public health, etc., and the benefit level should be fully evaluated in terms of the resources that the country is prepared to allocate to all Federal programs. Congress has never really had to choose between Social Security benefits and other needs. General revenue financing of Social Security will mandate that. Inflation will not be fueled by general revenue financing any more than it is by increases in the tax. We hope that the Administration can deliver on its promise to balance the budget and to end the annual deficits. If it does so, it cannot ignore the financing of Social Security. Certainly general revenue financing would be a great accomplishment in assuring the financial stability of the program; the tax hasn't done it and it won't.

STATE AND LOCAL GOVERNMENT EXPENDITURES

May we conclude by citing the implications of these proposals on state and local governments. We can speak authoritatively about the effect in New Jersey and perhaps we can make some national estimates.

State and local governments have two problems:

1. After 25 years of operation in which the state has assumed the responsibility for its reports and those of participating local governments, the Federal Government is about to issue regulations which would require more frequent deposits of Social Security monies. The regulations over the years have required the states to file reports and pay contributions within 45 days after the end of the calendar quarter. The proposed regulations may require the states to transmit monies monthly or even more frequently. The result would be to increase costs significantly in the first year; costs would continue in subsequent years as the state and local governments would lose the present use of such monies and therefore the earnings thereon.

2. In addition we are confronted with the contemplated increase in employer costs as contained in the Administration's proposals.

In the first year the cost of monthly deposits, to the State of New Jersey, on behalf of state employees and members of the Teachers' Fund for which the state pays the employer's tax, would aggregate \$29.9 million. Local governments would have to add \$20.1 million. The total would be \$50 million more in 1978 than the New Jersey governments would otherwise have to pay. Secondly, the employer tax on higher salaries would increase the state's liability by an additional \$17.6 million. Local government employers would have their costs increased by \$13.2 million. Finally, there would be an additional loss of interest income on monies advanced and this would total \$4.9 million in the first year for all governments. The state and local governments in New Jersey would be confronted with a more than one-third increase in cost.

In projecting cost on a nationwide basis, we believe that the most conservative factor would be 25 so that all of the cost figures noted above as appropriate to New Jersey could be multiplied by 25. This would be the minimum increase in cost to State and local governments whose public employees are covered under Social Security. Such minimum increase would raise the cost of Social Security to state and local governments throughout the country by \$1.4 billion.

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Mr. COTTER. Thank you very much.

Mr. Schulze?

Mr. SCHULZE. Thank you, Mr. Chairman.

I have no questions at this time, other than to thank the gentlemen for their presentations.

Mr. COTTER. Mr. Ketchum?

Mr. KETCHUM. No questions.

Mr. COTTER. Thank you very much, gentlemen.

Our next witness will be Miss Jean Marie Kelly.

Is Miss Kelly here?

Apparently not.

Our next witness, then, will consist of a panel with Mr. William Carter, counsel for the American Chambers of Commerce for Europe and the Mediterranean, and Father Joseph Cogo of the American Committee on Italian Migration.

PANEL CONSISTING OF WILLIAM G. CARTER, COUNSEL, ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE FOR EUROPE AND THE MEDITERRANEAN, AND REV. JOSEPH A. COGO, EXECUTIVE SECRETARY, AMERICAN COMMITTEE ON ITALIAN MIGRATION

Mr. CARTER. I am William Gilbert Carter, Mr. Chairman. I have a statement which I will summarize rapidly as I read.

I would also like to submit it for the record.

Mr. COTTER. Without objection, it will be entered into our record.

Mr. CARTER. Mr. Chairman and members of the subcommittee, my name is William Gilbert Carter. I am a member of Nicholson & Carter, a Washington, D.C., law firm.

I appear before you as counsel of the Association of American Chambers of Commerce for Europe and the Mediterranean (AACCEM), Inc., on behalf of the American Chamber of Commerce in Italy and the Swiss-American Chamber of Commerce.

We strongly recommend, as does the Chamber of Commerce of the United States, the adoption of the International Social Security Agreements Act.

The Association of American Chambers of Commerce, Europe and the Mediterranean, AACCEM, a nonprofit corporation incorporated in the District of Columbia, is a federation of American Chambers of Commerce in 11 countries of Europe and the Mediterranean basin, Austria, Belgium, France, Germany, Ireland, Italy, Morocco, the Netherlands, Spain, Switzerland, and the United Kingdom, representing some 14,000 firms, corporations, and individual members.

The purposes of AACCEM are: To foster economic development through the private enterprise system; to represent the mutual interests of its members; and to promote mutually beneficial, expanding business relationships between the United States and the countries of Europe and the Mediterranean basin.

My remarks today are specifically directed to the provisions in H.R. 8400 dealing with totalization and totalization agreements. Totalization is a logical and mutually beneficial method to coordinate the social security plans of different countries.

If authorized by the Congress, totalization agreements, as these international agreements are called, would reduce the costs incurred by

American employers doing business abroad and, correspondingly, would reduce the costs of foreign employers doing business in the United States.

The significant savings brought about by totalization agreements would have a positive effect on the global economic interests of the United States and the competitive position of American firms operating in foreign markets would be improved.

The present system is unfair and burdensome in two major respects.

First, in the absence of totalization agreements, multinational companies and their employees are subjected to double taxation.

U.S. citizens working abroad for a U.S. firm must participate in the social security system of the United States as well as the country where they work. Often the employer pays both employer and employee contributions to the foreign system to ease the burden on the U.S. employee who is already paying into the U.S. social security system.

Frequently, the U.S. citizen does not work long enough in the foreign country to become entitled to benefits. Thus, the payments made into that system are entirely lost. Foreign employers and employees in the United States are in a parallel position.

By stipulating that work covered under one system would be exempted from coverage under the other system, totalization agreements eliminate the present inequity that requires dual compulsory social security insurance contributions. The worker would be covered under the system of the country in which, over time, he has spent the most substantial part of his working life.

Thus, a U.S. citizen transferred temporarily to his company's subsidiary abroad would continue paying into the U.S. social security system but would be exempt from contributing to the foreign country. Similarly, foreign employees coming to the United States for a short period would be exempt from contributing to the U.S. system.

The potential savings to multinational companies are significant. In Switzerland, for example, about 550 U.S. companies are registered to do business. They employ most of the 2,000 American citizens gainfully employed in Switzerland.

Two Geneva-based European headquarters of U.S. corporations are illustrative. One, employing 45 Americans, pays \$400,000 in related Swiss social security taxes. The other firm employs 69 Americans, of which 46 are U.S. transferees. It pays \$350,000 for Swiss social security taxes. These figures include the U.S. employees' shares which the firms pay.

For the most part, such employees do not work long enough in Switzerland to benefit at all from the money contributed to the Swiss system. Until a few years ago, Switzerland would refund the employees' share in such instances. However, this is no longer the case.

In addition to Swiss taxes, the firms also pay for U.S. social security coverage of the same work. The cost of Swiss social security is exceptionally high since there is no income ceiling for the purpose of social security taxes.

A totalization agreement between the United States and Switzerland would save these two firms \$750,000. Both companies provide thousands of jobs in the United States, many of which are directly attributable to their foreign operations which, in turn, directly stimulate U.S. exports.

The reduction in the costs of employing Americans abroad which will result from passage of the bill would further stimulate the contribution of these firms to the global economic interests of the United States.

In Italy, some 700 U.S. subsidiaries employ about 5,000 U.S. citizens. In that country, the cost of social security is so high that it can make the difference between profit and loss for some companies.

Employers must pay 13.45 percent of the payroll amount into the Italian social security system. Usually the employee's share is 6.65 percent is also absorbed by the company, bringing the total payment to more than 20 percent above the payroll cost.

Since a minimum of 15 years payment is needed for coverage in Italy, and cost U.S. citizens employed leave after an average of 3 years, the great bulk of payments into the Italian system by or on behalf of U.S. citizens is lost.

Thus, the coming into force of a totalization agreement between the United States and Italy would result in tremendous cost savings to the U.S. companies in Italy with a consequent improvement in efficiency and productivity.

The second problem which would be solved by enactment of this bill arises where U.S. citizens divide their careers between work covered under the U.S. social security system and work covered under a foreign social security system. They often do not work long enough in either system to accrue benefits. Payments into both systems are therefore lost.

A totalization agreement would cure this inequity by permitting the number of years worked in each country to be added together.

If the total exceeds the minimum number of years required by each country to be eligible for benefits, each country would pay an amount based on the proportion of totalized employment that was completed in that country.

If the total exceeded the minimum of only one country, that country would pay the proportion of benefits corresponding to the time worked in that country.

No totalization would be necessary where the employee has worked long enough in one country to be entitled to benefits from it without regard to time worked in the other country.

Generally, more immigrants remain in the United States than return to their native countries and most U.S. citizens working abroad eventually return here.

Accordingly, as was demonstrated during the court of administration testimony at last year's hearing on this issue there would be a net gain to the U.S. balance of payments under any totalization agreement because of the savings to U.S. employers abroad and because of the social security benefits that would become payable by foreign countries to U.S. residents.

In 1973 HEW entered into a totalization agreement with Italy which has been ratified by the Italian legislature.

In 1976, an agreement was entered into between HEW and the Federal Republic of Germany. The legislature of the Federal Republic of Germany has ratified that agreement.

Technical discussions are being conducted with Switzerland and Canada. In Iran, U.S. businessmen have also expressed interest in

a totalization agreement; there are about 12,000 Americans working in Iran who would benefit from such an agreement.

Though the United Kingdom has expressed an interest in entering into a bilateral social security agreement with the United States, it refuses to negotiate until this enabling legislation is passed.

No totalization agreement can become effective until Congress enacts the enabling legislation now before you.

In order for HEW to continue negotiating totalization agreements with foreign countries in a credible manner, it is essential that Congress endorse such action.

We understand from HEW that this legislation would cause no significant new expenditure, and that any individual agreement would have to be submitted to Congress for comment and review.

Totalization agreements offer savings to multinational firms and greater protection for employees who work in the different countries during their careers.

In spite of the many technicalities that need to be worked out in each agreement, we are confident that the administration and officials abroad have the expertise needed to effect mutually beneficial totalization agreements.

Your expedient and favorable action on this legislation will rid the system of the inequities that now exist, will permit the productive use of money that would otherwise be lost in foreign social security systems, and will advance the overall economic interests of the United States.

The American Chamber of Commerce in Italy and the Swiss-American Chamber of Commerce strongly urge your favorable consideration of H.R. 8400 which would provide general authority for the President to enter into bilateral social security agreements with interested countries.

Thank you for your attention.

Mr. COTTER. Thank you, Mr. Carter.

Father Cogo, you may proceed. If you care to summarize without objection, your whole statement will be made a part of the record.

STATEMENT OF REV. JOSEPH A. COGO

Father Cogo. If I could take 7 minutes, I would rather read it almost in its entirety.

My name is Father Joseph A. Cogo, C.S., executive secretary of the American Committee on Italian Migration, ACIM, 373 Fifth Avenue, New York, N.Y., 10016.

I am appearing at this hearing on behalf of the American Committee on Italian Migration to support enactment of the administration's proposal known as the International Social Security Agreements Act, which will make possible the prompt approval and implementation of the United States-Italy Social Security Agreement signed on May 23, 1973. This is also often referred to as the United States-Italy Totalization Agreement.

The American Committee on Italian Migration, which is a member agency of the National Catholic Resettlement Council was founded 25 years ago as a nonprofit, voluntary organization devoted to the be-

lief that our country's immigration policy should always reflect traditional values of equality and justice.

Its primary objective of having the racially discriminatory "national origins" concept abolished and establishing a fair and equitable system of preferences for selection of immigrants was achieved in 1965.

In the 12 succeeding years, ACIM has been dedicated to safeguarding the gains achieved by the 1965 Immigration Reform Act and to a vast program of social assistance to Italian immigrants in their problems of resettlement and assimilation.

Our organization provides expert technical assistance in matters of immigration petitions, applications for citizenship, in problems dealing with our social security system as well as with the Italian social security system.

It is in this daily experience that we have acquired a firsthand knowledge of the great disadvantages that befall Italian immigrants, as well as other immigrants I am sure, on account of a lack of a mutual agreement in social security matters between the two countries.

When a person emigrates to the United States from Italy as well as from other countries that person is not only uprooted from a community but breaks ties with the civil institutions that exist in the country of origin.

Among these are the institutions that provide social protection such as social security pensions for old age, disability, and premature death of the breadwinner—that is, survivorship.

New ties are not created automatically in the United States. Both time and the fulfillment of legal requirements are needed to provide substitutes. It is unnecessary, I am sure, to recount for this committee the insured status requirements that are provided under the Social Security Act before an individual or the family can qualify for a benefit that would offer meaningful protection.

I only wish to remind you that a worker who enters the U.S. system late in a career carries a permanent handicap in achieving entitlement and the size of the benefit compared to a worker who has been covered throughout a career.

If an immigrant has accumulated some protection abroad but not sufficient to reap a pension in due time, that should not be sacrificed as part of the price for the opportunity to immigrate to the United States.

Also, if an immigrant who has accumulated enough protection abroad to be eligible in due time to reap a pension from his country of origin, is not able because of his advanced age to accumulate enough protection under our social security system to reap a pension, he should not be penalized to lose the limited benefits of his limited contributions here.

It does not have to be so, nor is it in the best interests of the United States or of these new Americans that it be so.

These problems, Mr. Chairman, are real and serious and affect not a small number of people, but I venture to say the majority of people up to now were simply forced to resign themselves to a merciless but stronger power without any possibility of recourse.

We feel that we are dealing with a social injustice here which democratic governments espousing protection of human rights must attempt to correct.

The solution to this problem is a relatively simple one: totalization agreements.

I am led to understand that such agreements are not new. They have been in use for half a century in Western Europe and have been generally endorsed as good social policy by the international community.

For example, the International Labor Organization has had an international convention on this matter since 1935. The European community endorsed the practice in the Treaty of Rome in 1957 and has implemented extensive supranational regulations.

Even the 1975 Helsinki accords have reaffirmed support of the concept in dealing with migrant workers. Three successive U.S. Presidential administrations have now endorsed it.

A totalization agreement means that when an immigrant leaves his country to make a new home in another, he does not automatically lose any of the protection or credits that he earned in the old country.

For an Italian worker, 15 years of insured credit in Italy is necessary to qualify for an old-age pension; 5 years of insurance credit including 12 months within the last 5 years is required for disability.

For his survivors to receive any benefits, a worker must be on pension or must meet the requirements for a pension. Once he leaves Italy, the only way he can continue presently to accumulate credits under the Italian social security system is through voluntary contributions of both employer and employee's share, which amounts to about 20 percent of his salary or wages.

This is beyond the means of most immigrants. If he did not yet meet the requirements to make these voluntary contributions at the time of migration, his credits, as a practical matter under the present circumstances, are lost.

If his disability protection runs out in Italy before he meets the insured status requirements in the United States, and he becomes disabled here, he is left completely uncovered and unprotected by both the U.S. and Italian systems.

The best he can hope for is to become a public charge and only then if he meets certain requirements.

From our agency's daily dealings with Italian immigrants I can vouch that many of them make great sacrifices to continue payment of their contributions to the Italian social security system on a voluntary basis, precisely because they find themselves in difficulty, and many times because they recognize the impossibility of meeting the coverage requirement in our social security system.

But it is a sacrifice that should be spared them.

Not only does this procedure cost them double, having to pay also the employer's share, but it also becomes very burdensome.

The Italian consular offices cannot provide them with adequate service because of their limited staff: and great distances are to be traveled which cause people to lose precious work days.

The lack of proper information and service causes too many Italian immigrants to abandon the voluntary payment to the Italian social security system.

The consequence is obvious: these people are deprived of benefits that are due them from the Italian social security and ultimately our Government misses out in the balance of payments, since these immigrants will never receive those pension payments in this country.

Under a totalization agreement, we have been informed, the credits such a person earns under the U.S. social security system will continue to count toward meeting the insurance requirements in Italy.

Regardless of the amount of a benefit for which he may eventually qualify from the U.S. system, the Italian system will use his credits in both countries to determine his entitlement there, and if the worker meets the requirements, he or his family will receive Italian benefits commensurate with the work actually performed there.

If he fails to work long enough in the United States to qualify for a benefit from this country, our social security system would also be required to take account of his Italian credits and if, through combining the credits in both countries, he meets our requirements, our system would pay him a benefit based on the actual work performed in the United States, while the Italian system will pay him a benefit based on the actual work performed in Italy.

The situation, in summary, as we understand it, is as follows:

First. If an individual fully qualifies for benefits in both countries, he would as now receive benefits from both.

Second. If he qualifies in one country but not in the other, he would receive a full benefit from the one and could receive a partial benefit from the other if his combined credits are sufficient.

Third. If he does not qualify independently in either country, he could qualify based on combined credits in either one or both countries for partial benefits paid proportionately by both countries.

In the second and third cases, the totalization agreement would improve his chances of ultimately receiving benefits that are commensurate with the work he performed and the contributions he made throughout his working life, even though he migrates from one country to another.

We are aware that the Congress is justifiably concerned with the cost to the U.S. Social Security System now and in the future and we realize that there would be a small cost attributed to this measure.

We should like to point out, first of all, that the payments thus made by the social security system are nothing but bestowal on the insured person of the protection that he paid for while working.

The way things stand now in both the Italian and United States systems, it seems to us somewhat immoral and unfair to accept payments from a worker "in the hope" that in later years no payments can be made to him or her in the event that not a sufficient number of quarters are paid in.

But, furthermore, we hasten to remind this committee that there is also a cost—social and financial—that can be attributed to not adopting it.

The social cost: Immigrants who, because of short work careers, in the United States, fail to acquire adequate U.S. social security protection, are likely to become public charges.

The financial cost: The loss of payments of partial benefits from abroad payable to immigrants here, which would supplement their U.S. social security benefits.

In addition, receipt of these payments would also affect favorably our international balance of payments.

We understand from the Social Security Administration that last year they estimated as many as 55,000 residents of the United States who might have some additional claims under the Italian system if the agreement goes into effect, and as many as 5,000 new claims per year are anticipated.

We also understand that they estimated a substantial balance of payments advantage to the United States under the agreements already signed with Italy and Germany—perhaps \$15 to \$20 million in 1979.

These prognosticated advantageous situations for our country should certainly encourage our Congress to proceed speedily toward the ratification of the totalization agreement with Italy.

But I should also like to point out, if any further encouragement is needed, that Italy, a country in serious financial distress, has already ratified this agreement, even though fully aware that it will cost her much more than she will receive.

Our country should not be less generous and less responsive to its responsibility to pursue social justice.

It is certainly heartening to learn that our Congress is moving in this direction. We commend Congressman Abner Mikva, of Illinois, who several days ago introduced a bill, H.R. 8400, to this effect.

We are further encouraged by the fact that both labor, AFL-CIO, and management, the U.S. Chamber of Commerce, have clearly expressed their support of this piece of legislation.

The American Committee on Italian Migration notes with pride that our Government has chosen Italy as the first foreign country with which to enter into a totalization agreement—signed in Washington on May 23, 1973.

We sincerely hope that it will soon be the first to enter into force upon speedy ratification by our Congress.

Immigrants from Italy over the last 160 years have numbered over 5¼ million persons making them the second largest immigrant group of any national origin.

Some very great Americans have descended from this group including the present Secretary of HEW, who supports this legislation.

The first treaty ever concluded by the United States dealing with social security—in that case, workmen's compensation—was with Italy in 1913.

The first treaty signed by the United States which committed it to a policy of totalization was with Italy in 1951.

It is a long time from 1951 to now, Mr. Chairman, and it is 4 years since the agreement under discussion was signed with Italy and 2 years since Italy's Parliament has ratified it.

I would hasten to add, Mr. Chairman, that the proposed legislation does not only benefit Italian immigrants. We have learned that immigrant from many other countries stand to gain similarly as other agreements are concluded.

ACIM realizes that there are many complexities in achieving a fair policy of pensions for migrants. Totalization is a step in the right direction: a direction in which other countries, some with systems less

well developed and less well financed than our own, have been moving for many years.

For the industrialized countries of Europe, this approach has been reasonably successful and has even been applied to other forms of social security such as health insurance and cash sickness benefits whenever the accumulation of insurance credits is a requirement.

We believe that the time has come when the United States, out of consideration for its relations with the countries of origin and for the general welfare of the massive number of immigrants who have settled here, should take steps to implement a similar policy.

Thank you, Mr. Chairman, for the opportunity to appear before you today and to present this viewpoint.

Mr. COTTER. Thank you very much, Father.

I can only conclude that you two gentlemen are in agreement of this matter.

Mr. CARTER. We just met this morning, Mr. Chairman.

Father Cogo. That is right.

Mr. COTTER. I, too, feel this is something we should address ourselves to.

We held hearings in the last Congress on it but because of the rush of business during the deadline, we were not able to act favorably upon it.

I hope it is something we can do very soon because, from the standpoint of equity, I think it should be addressed and we should give the President the authority to negotiate these matters.

Mr. Schulze?

Mr. SCHULZE. Thank you, Mr. Chairman.

This is a problem with which this committee has wrestled before. We appreciate your bringing it to our attention again, and we just hope that we can have a fair and equitable resolution.

Thank you for your testimony.

Mr. KETCHUM. Thank you, Mr. Chairman.

I was not on this subcommittee last year, and I have some problems with this idea.

I can understand the position of the American chambers abroad as far as the economic disadvantage or competitive disadvantage would be concerned.

Would it not be, in addressing your particular problem, better to conclude negotiations that say American citizens working abroad for an American company pay American social security and do not pay into the Italian system or the Swiss system or whatever, and conversely, that foreign nationals in the United States do not pay into the U.S. system if they pay into the system of their own country?

Mr. CARTER. That would be the effect of one part of totalization agreements.

That is one aspect of it.

Mr. KETCHUM. I have some concerns when we are talking about an individual having worked within one system for part of his life and then coming to another country and working within a system there.

We have the same problem existing in the United States. If you don't work 40 quarters, you are not fully covered.

That is the way the social security law has written. But we have educators in the United States who work within one State and move to another State and their retirement is not portable.

We have wrestled with that one a number of times in my own home State of California, and it really represented a substantial raid on the California treasury and was turned down rather substantially.

So, I do admit to having some problems with this idea of saying it is unfair if you have worked part-time in one system and part-time in another. I think that is a decision that an individual is going to have to make as time goes on.

I am very uncomfortable with, and I am trying to be candid, the thought that I would be granting to any Secretary of State, no matter who it is, authority to make a decision on behalf of the American public—the decision to enter into agreements with another country as to how we are going to handle totalization, as to who is going to pay what.

I have no assurance that the Italian economy is even going to hold up. What happens when an individual is here and we have made the agreement and all of a sudden there is no payment forthcoming from the Italian Government?

By the same token, I suppose it could happen the other way around, but it is a little less likely.

MR. CARTER. I would guess I would start by saying there ain't no guarantees on anything in life.

MR. KETCHUM. Yes, life is unfair, and we have to face that once in a while.

I think President Kennedy said that once.

MR. CARTER. I am sure you would agree with me that a person paying into two systems and receiving benefits from neither—

MR. KETCHUM. That is totally unfair, I buy that.

MR. CARTER. This is designed to address itself to that as well.

MR. KETCHUM. I would far rather, from my standpoint, say to those countries, in effect, some of our nationals are in your country working and they are paying into the U.S. system, so let's negotiate paying to your system and vice versa with your citizens working in the United States.

I think on behalf of American citizens that is the way to handle it rather than getting into some complex negotiation as to who pays into what and for how much.

I recognize the problem and I sympathize with it but I am not sure it would work.

MR. CARTER. My understanding of the structure is that it isn't that complex in the sense that you keep track of total time worked in both countries.

You have the record sheets as to what contributions have been paid. The amount of benefits that might be paid by Italy—assuming a situation where the partial benefit is paid by both—is that proportion of the Italian benefit which the years worked in Italy bears to the total number of years worked.

In other words, there is no guarantee of any particular amount. It is saying if you worked 10 years in Italy and you are entitled to 100 and 10 is half of what you worked, you get 50 from Italy.

In that sense it is a balance of the equities of the work.

Of course, the amount of benefit differs widely from country to country. As I understand it, there is no possibility of, if I may say so, an "international double-dip."

Mr. KETCHUM. I understand that. But what about an American citizen who has never left the country and who works 10 or 20 quarters and then leaves the social security system and is not eligible for full coverage? What do I say to such a person? Does he get a partial benefit?

Mr. CARTER. You might need additional legislation?

Mr. KETCHUM. No, because I don't think he is entitled to it, that is not the way the system is set up.

Mr. CARTER. I suppose when we invent a system the system can be changed, too.

Mr. KETCHUM. Oh, yes, indeed. I am just expressing some of the reservations I have and I think you should know them.

Mr. CARTER. I appreciate that and I appreciate very much the opportunity to talk to you about it.

Father Cogo. Mr. Ketchum, when you said you would rather see the two systems separate, I understand your objection when you have a temporary American citizen going to Italy or conversely.

That, I understand. How about when you have an immigration problem when you have people who move from one country and re-settle in another?

This is one objection I have.

Second, you also objected to the fact that you don't want the United States to enter into agreements with another country without the consent of Congress, but Congress does have the authority or the jurisdiction to ratify.

Mr. KETCHUM. I understand that. Having been around legislative bodies for a substantial amount of time, and having seen the way some things get ratified around here, and in other legislative bodies—and I am not knocking Congress—but it is too complex.

The three of us, as an example, sitting here as members of a subcommittee of a 37-member committee, possibly might not understand what happened on the floor and they could say, "Goodness, if old George at the State Department says it is OK, it is OK with me."

The other problem I have relates to a decision that immigrants have to make. They are coming to this country for a specific reason, they are leaving a system that they did not like or could not survive under or for whatever their reasons.

I have never ever heard of an immigrant to this country trying to get to go somewhere else.

Most of the people I have talked with abroad are people who would dearly love to come to this country for a multiplicity of reasons and I think that a consideration they have to take into account when they make that move is that they would dislocate themselves from their home country.

It is a difficult decision to make, to be sure.

I don't think that I want to be a party to saying, hey, if you come on over here, we will make a little deal with you and because you worked over here we will give you a piece of the action in this system. I know that sounds cold and heartless, but I just think if we are going to do these things that we have some tough decisions to make.

Father Cogo. Another question: Why are you afraid that our system would have to pay out more?

Mr. KETCHUM. I didn't say that.

I am not afraid of anything except death and taxes, and both of those are inevitable.

I didn't say that. I just have reservations about splitting credits when the U.S. system says that if you work so many quarters you are eligible; if you don't work that many quarters, then you are simply not eligible and if you didn't that's too bad.

The individual would have to work 40 quarters here under our system?

Mr. CARTER. He would have to qualify for the minimum working under our system to receive the benefit from the United States.

What would happen is the time he worked in the United States, if not long enough to qualify for U.S. benefits, would be credited on top of the time he worked in Italy, permitting him to receive a benefit from Italy which he would otherwise not be eligible for.

Mr. KETCHUM. I am willing to take a look but I do want you to know I have serious reservations.

Mr. COTTER. Thank you very much.

[The following was submitted for the record:]

AMERICAN FEDERATION OF JEWS FROM CENTRAL EUROPE, INC.,
New York, N.Y., July 15, 1977.

HON. JAMES A. BURKE,
Chairman, Subcommittee on Social Security, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN BURKE: Since we wrote you concerning the International Social Security Agreements Act on September 2, 1976, we have had additional information concerning the impact of the Totalization Legislation now before your Committee. We remain as concerned as ever with the passage of this Bill, if such passage will be combined with a directive of Congress to the Commissioner of the Social Security Administration to discuss the re-opening of a deadline for applications to the German system under the legislation now existing for Nazi victims.

We submit 30 copies of our communication to you, dated September 2, 1976, which is part of the record of the Committee's Hearing on the subject in question (Hearing on the International Social Security Agreements Act, H.R. 14429). We ask that this letter be made part of the record of the present Hearing, as it is on the record of the 94th Congress.

By the Agreement before you, persons who have made at least 60 months of contributions to the Federal Republic of Germany (FRG) system would be permitted to make further voluntary contributions in order to establish their entitlement to FRG benefits. This provision would benefit Nazi victims who were kept by Nazi persecution from acquiring the required number of months.

However, the Agreement does not resolve one important impediment regarding the eligibility of former Nazi persecutees to make certain voluntary contributions to the FRG social security system. Under the provisions of West German restitution and indemnification laws, Nazi victims with, in general, 60 months of FRG social security coverage were permitted until December 31, 1975, to claim the right to make voluntary contributions on a current basis as well as substantial retroactive contributions and thereby, in effect, become eligible for a lifetime annuity beginning at retirement age. Because some countries had agreements with the FRG in effect before December 31, 1975, which permit citizens of these countries to make voluntary contributions to the FRG system, even though they may have no prior coverage under that system, those citizens who were former Nazi-persecutees were able to meet the 60 months requirement by making voluntary contributions under the applicable international agreement. Since the German-American Agreement before you was initiated only on January 7, 1976, and the deadline for Nazi victims who might have become eligible for benefits under this Agreement had expired a week earlier, in December 31, 1975, these U.S. citizens residing outside the FRG were unable to meet the require-

ments. We estimate that up to 1,800 U.S. citizens would benefit if the deadline were re-opened by the West German government.

In addition, if the deadline would be re-opened, U.S. citizens from such former Nazi-occupied countries as Rumania, Hungary or Slovakia, who had suffered persecution at the hand of the Nazi occupiers and whose claims to social security benefits have been recognized by the FRG system, and would thus become eligible for entitlements as provided by this Totalization Agreement.

Many of these Nazi victims are considerably advanced in years, are widowed, or are suffering in health from the experiences they underwent. It would, therefore, seem to be in the interest of justice and fairness to urge the Executive Branch of our Government to make sure that the negotiations to implement the German-American Agreement, now before this Committee, will lead to a re-opening of the deadline for Nazi victims on the part of the FRG. The government of the FRG responding to an inquiry of our Department of State has already expressed its readiness to discuss the re-opening of the deadline. Thus, an expression of legislative intent in connection with the passage of the Totalization Agreement should go a long way in removing at least some of the wrongs inflicted upon a group of innocent victims of persecution by the former Nazi-German government.

We stand ready to supply further details and legal references to these issues if you so desire.

Thanking you for your consideration, I remain,

Yours sincerely,

HERBERT A. STRAUSS,
Executive Vice President.

AMERICAN FEDERATION OF JEWS FROM CENTRAL EUROPE, INC.
New York, N.Y., September 2, 1976.

HON. JAMES A. BURKE,
*Chairman, Subcommittee on Social Security, U.S. House of Representatives,
Washington, D.C.*

DEAR CONGRESSMAN BURKE: We are writing you in connection with your announcement, dated August 17, 1976, concerning the International Social Security Agreements Act. In this announcement you are inviting comments from individuals and/or organizations that would be affected by the Totalization Legislation concerning a bi-lateral agreement between the United States and the German Federal Republic.

Our organization represents the social, religious and cultural organizations established by Nazi victims who had found refuge in this country since 1933. Members of our group would be directly affected if the bi-lateral agreement already ratified by the Bonn government would reach the President's desk for his authorization.

In principle, we consider the agreement between Germany and the United States a positive piece of legislation deserving of passage. We suggest, however, that your Committee recommend in the strongest possible way that the Executive Branch of the government obtain from the Bonn government, specifically its Ministry of Labor and Social Order, an undertaking that the government stands prepared to take steps to insure that U.S. citizens who were victims of Nazi persecution will receive rights corresponding to those granted to Nazi victims in bi-lateral agreements between the German government and other countries.

Specifically, under German law Nazi victims were entitled to file applications until December 31, 1975 enabling them to benefit from provisions established for this group under German Social Security. Under the pending bi-lateral agreement, now before your subcommittee, Nazi victims would be entitled to additional benefits. However, since the deadline for applications under German law expired on December 31, 1975, the benefits which would accrue to them under the bi-lateral agreement could not be realized. This is the more significant as the agreement itself and the authoritative comment on the agreement published in the official German journal on Social Security state expressis verbis that the law maker intended to extend such benefits to Nazi victims. In addition, similar agreements between the German government and the governments of Canada, Israel and certain countries of the European Economic Community have considered the interests of Nazi victims who are nationals of these countries by either extending or re-opening the deadline for applications.

In view of this situation we respectfully urge that in ratifying this bill the Congress direct the Commissioner of the U.S. Social Security Administration to obtain from the German government an undertaking that the rights of American citizens who were Nazi victims will be respected, and that a correction on the part of the German government will be expected, for example by way of an enabling decree re-opening the deadline for applications under the present agreement for an appropriate period.

Thanking you and the Subcommittee for your consideration, I remain,

Your sincerely,

HERBERT A. STRAUSS,
Executive Vice President.

ASSOCIATION OF AMERICAN CITIZENS
INSURED IN THE GERMAN RETIREMENT SYSTEM.
Los Angeles, Calif., May 2, 1977.

Re International Social Security Agreement Act—H.R. 14429 United States—
Federal Republic of Germany.

HON. JAMES A. BURKE,
*Chairman, Subcommittee on Social Security
Committee on Ways and Means,
Washington, D.C.*

DEAR SIR: In response to the letter dated 14 April 1977, mailed to our office by the Honorable Mr. Al Ullman, we take the liberty to submit to you our viewpoint and statement.

We represent many thousands of U.S. citizens who are voluntarily in the German Retirement System in continuation of their prior mandatory insurance. In October 1972 the Socialist German Government cancelled all policies of U.S. citizens under the reason that no Social Security Agreement between the U.S. and the Federal Republic of Germany (FRG) exists. The insured U.S. citizens were notified of the cancellation of their policies 18 months later. However, since October 1972 the Official Semi-Government Insurance Company, which is handling the insurance, continued to accept insurance premiums. These premiums are paid voluntarily and completely by the insured alone.

The cancellation was, in our opinion, in disagreement with the German Constitution, in violation of the existing German Social Laws, and immoral. Therefore, legal proceedings are pending in the subject courts. The entire action is challenged in the German Supreme Court as being unconstitutional: however, these cases last for years and years.

Due to our intervention and justified protests continuing for years and with the heartfelt support of the opposition party of the Christian Democrats, the German Parliament finally ratified the subject Social Security Agreement in August 1976. The law was published on August 7, 1976 in the Official German Law Book. The "Agreement" was originally signed on January 7, 1976 by Mr. David Mathews, formerly Secretary of HEW, U.S., and Mr. Walter Arendt, Minister for Labor and Social Affairs, FRG.

In response to inquiries by our office and those of other U.S. citizens, the German officials claim that they did their part to ratify the "Agreement" and it is up to the U.S. Government to follow with appropriate action.

In our possession is the printed record of the Second Session on H.R. 14429 dated August 4, 1976. The record contains the U.S.-FRG TOTALIZATION AGREEMENT in various parts and articles. The "Agreement" shows the signature of the representatives as listed above. On page 54 of the record, Mr. Cotter stated that the bill in its present form would not require ratification by Congress, merely notification. Also, Commissioner Cardwell (HEW) made a comment to the "report and wait" provision and stated that the Congress would be presented with the proposed "Agreement" and would have 60 days in which to advise the Executive of their position or otherwise it would become effective.

It was our understanding that the 60-day waiting period has passed quite a while ago and no other action was necessary.

Due to the fact that our members are of advanced age, refugees, victims of the war and political persecution, it is of utmost importance that the "Agreement" is finally ratified. The German insurance company refuses to adjust retirement payments for retired persons who contributed to the system after October 1972. Some of our members already passed away without having received their rightful benefits for which they paid their premiums.

Please let us emphasize again that the U.S. Government will not have to contribute any money, but will benefit due to the transfer of German currency. The "Agreement" has absolutely no relationship with the financial aspects of the Old Age, Survivors and Disability Funds. This is a completely separate internal affair. It is in no way connected with the "Agreement" between the U.S. and the FRG.

Dear Chairman, please use your influence and knowledge to persuade the Committee that this overdue "Agreement" is finally passed by appropriate legislation.

Your assistance in this extremely important matter is greatly appreciated. In view of the fact that the foregoing explanation should be sufficient evidence and clearly understood, we abstain from sending a delegate to the hearing. The limited time available to the Committee for this hearing is another reason to proceed with the hearing as soon as possible. Our representative would only be able to repeat what is said before and in our letters included in the printed records of the second hearing held on August 4, 1976.

Sincerely yours,

R. W. VON BURKE, *Secretary.*

DENVER, COLO., May 10, 1977.

HON. JAMES A. BURKE,

Chairman, Subcommittee on Social Security, Committee on Ways and Means, Washington, D.C.

DEAR CONGRESSMAN BURKE: In answer to your bulletin of April 14, 1977 the following is my written statement for inclusion in the printed record of the upcoming hearing on Social Security.

My case falls into the category of international social security agreements.

I entered this country legally in 1939 as a refugee from Nazi Germany, having acquired US citizenship in 1945.

Over a period of time I have taken appropriate measures with the help of my attorney there, representing me before the respective West German authorities. The results of these activities should entitle me to benefits at age 60. For the record I would like to state that I will be 62 later this year.

While former German citizens, residing now in Israel, Canada and other Western European countries have been receiving such benefits from West Germany, I as an American citizen feel like being discriminated against. Furthermore it is known to me that I could obtain these benefits, if I would become a citizen of West Germany, which I will not do.

An early agreement between the West German and U.S. Governments on Social Security matters would be of the utmost urgency for any U.S. citizens who were victims of Nazi persecution.

Thank you for the opportunity to state my case.

Very sincerely,

(Mrs.) ALICE J. BAER.

[Mailgram]

BROWN BOVERI CORP.,

North Brunswick, N.J., July 20, 1977.

HON. JAMES A. BURKE,

Chairman, Subcommittee on Social Security, House Committee on Ways and Means, Washington, D.C.:

Brown Boveri is a multinational manufacturer with offices and shops in North Brunswick, New Jersey and Richmond, Virginia has followed with great interest past and present hearings on the proposed "International Social Security Agreement Act". It is the purpose of this communication to indicate our full support for the efforts of your committee to propose legislation to Congress, which would exempt Americans who work abroad for foreign nationals working in this country from participating in foreign social security programs as long as they participate in U.S. social security or, in the case of foreign nationals, provide exemption from U.S. social security as long as they participate in their native social security program. The present duplication of expenses in paying contributions to two systems without obtaining benefits is inequitable and expensive. We believe that the proposed new law will correct this situation.

Sincerely,

EDWARD H. STAUFFER,
Corporate Secretary.

CHAMBER OF COMMERCE OF THE UNITED STATES,

May 19, 1977.

Hon. JAMES A. BURKE,

Chairman, Subcommittee on Social Security, Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the National Chamber's 67,000 members, I appreciate this opportunity to comment on international social security agreements.

For many years, the Chamber has urged enactment of legislation to enable the President to enter into bilateral social security totalization agreements. Our interests reflect the experience of many of our members engaged in international business as well as the forty American Chambers of Commerce Abroad (AmChams) with which we are affiliated. AmChams consist largely of the foreign affiliates of U.S. corporations. This makes them well qualified to assess the practical benefits of social security totalization.

In previous testimony before the Subcommittee, for instance in our letter of August 26, 1976, we detailed the various benefits of totalization. Here, we wish to emphasize just two aspects.

First, the current world economic situation requires that we employ every possible means of enhancing the international competitive position of American firms. Totalization, by reducing the expense and inefficiency of dual coverage, is one of the means readily available to us.

Second, the personal interests in totalization of individual American workers need recognition. At any time, U.S. international economic performance depends on large numbers of American citizens being based abroad temporarily.

These numbers have increased in recent years, particularly in response to the new construction business opportunities that have developed in Middle East oil producing countries. The absence of totalization agreements places a significant financial burden on these and other American workers abroad.

We understand from the Department of Health, Education, and Welfare that enacting legislation would cause no significant new expenditure, and that any individual agreements proposed would have to be submitted to Congress for comment and review. Congress would thus have the opportunity to consider in detail the cost and possible policy implications of any proposed totalization agreement.

We will appreciate your consideration of our views and request that this letter be made part of the hearings record.

Cordially,

HILTON DAVIS,

Vice President, Legislative Action.

[The following was requested to be included in the record of this hearing by Chairman Burke:]

DOW CHEMICAL EUROPE,

Horgen, Switzerland, May 3, 1977.

Hon. JAMES A. BURKE,

Chairman, Subcommittee on Social Security, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: Since establishing operations in Europe in 1952 Dow Chemical Europe S.A. has maintained its European/African headquarters in Switzerland. (Dow Chemical Europe is a wholly-owned subsidiary of The Dow Chemical Company, Midland, Michigan).

While the majority of our employees have naturally been Swiss citizens we have always had to have (and continue to have) a substantial nucleus of experienced American citizens managing our vastly-expanded operations. Our parent company has a contract of long-standing under "Amendment to Contract Coverage under title II of the Social Security Act as Amended" with respect to Dow Chemical Europe S.A. Thus all our American employees participate in OASDI contributions and benefits.

Simultaneously these American citizens employed in Switzerland are required to participate in Swiss Social Security. Unlike U.S.A. Social Security there is no contribution earnings ceiling under Swiss Social Security. The company and the employees each contribute 5 percent of salary to Swiss Social Security.

No benefit is payable to U.S. citizens contributing to Swiss Social Security unless they have contributed for a minimum of five years. For a variety of business reasons our U.S. citizens working in Switzerland rarely remain in Switzerland for five years and hence they do not qualify for Swiss Social Security benefits. As it is a hardship for employees to contribute simultaneously to two Social Security systems the company reimburses to the employee the employee contribution to Swiss Social Security. Thusly American firms operating in Switzerland suffer a 10 percent tax disadvantage with respect to all of those employees who are U.S. citizens.

The present status also works a hardship on local Swiss residents of dual citizenship (one of which is U.S. citizenship). If we employ such persons they too must pay into both the U.S.A. and Swiss Social Security systems.

Switzerland, amongst many other industrialized countries, has concluded bilateral Social Security agreements with other nations to obviate inequities of the type noted above. We request that the Congress of the United States enact legislation that would enable the Executive Branch of the U.S. government to negotiate bilateral Social Security agreements with other nations, specifically Switzerland.

Yours sincerely,

T.E. KNAPP, *Director of Pensions, Europe.*

ALLENTOWN, PA., May 12, 1977.

HON. JAMES A. BURKE,

Chairman, Subcommittee on Social Security, House Committee on Ways and Means, Washington, D.C.

DEAR CHAIRMAN BURKE: This is in response to your invitation as Chairman of the House Ways and Means Subcommittee on Social Security, to comment on President Carter's Social Security Proposals. In the following I want to comment on international social security agreements, since this affects my person.

I am 66, and retired. I am a victim of political persecution by the Nazi regime, which was acknowledged by the Social Court in West Berlin. In 1967, I became a naturalized U.S.-citizen. For my former work, the German Social Security Institute (Bundesversicherungsanstalt für Angestellte abor. Bfa) in Berlin, awarded me with Pension Certificate of March 8, 1977, a monthly disability pension (I suffered a stroke) in the amount of DM 1296.60 (German Marks) for 28.5 insurance years, i.e. period of coverage. Simultaneously however, the Bfa in Berlin reduced my monthly pension cash benefit to 12.28 percent, i.e. 159.30 German Marks, with the motivation that I am residing in the United States. According to the Bfa, the reason for this reduction is that I served 87.7 percent of my period of coverage on territory, which at the present time is outside the borders of the Federal Republic of Germany, and therefore is not acquired under present German federal laws. If I would reside in the FRG, I would get my full pension. This means that payment of full cash benefits requires my physical presence in Germany, despite that I am a U.S.-citizen.

On January 7, 1976, an Agreement between the United States of America, and the Federal Republic of Germany on Social Security was signed in Washington, D.C., with the intention to regulate the relationship between both countries in the area of social security. As yet, this Agreement is not in force, since it was not ratified by the parliaments of both countries. For the U.S., this Agreement was signed by the secretary of HEW, Mr. David Mathews.

I studied the above cited Agreement in the hope to find some clues which would apply to my case, and relieve my situation. This I found in Article 5, of the Agreement which reads:

"Unless otherwise provided in the Agreement, the laws of one Contracting State which require that entitlement to or payment of cash benefits be dependent on residence in the territory of that Contracting State, shall not be applicable to persons designated in Article 3 (a), (b), (c) and (d), who ordinarily reside in the territory of the other Contracting State."

This would apply to my case. But reading further, I noticed that the meaning of Article 5 is nullified by chapter 4, point (a) of the Final Protocol of this Agreement, which says:

"With reference to Article 5 of the Agreement: (a) The German laws regarding cash benefits in respect of periods of coverage accumulated other than under federal law shall be unaffected".

Comparing these two statements, one is under impression that for a certain group of pensioners the Agreement acts like the proverbial Indian giver.

In connection with this it is most important to point out that the U.S.-Social Security pays and transfers pensions in full and without any restrictions and reductions to Social Security pensioners residing in West Germany. This is practiced for many years, and results also from the DHEW-Publication No. (SSA) 74-10137, entitled: "Your Social Security Check while you are outside the United States", page 9, in connection with page 22.

As can be seen, the American contracting party pays Social Security benefits to recipients in West Germany without any restrictions, whereas the German contracting party requires American citizens to move and stay in Germany, to be able to collect Social Security benefits, and this with the consent of the American contracting party. I don't think it is the real intention of the U.S.-Government to approve and tolerate such conditions, according to which U.S.-citizens are forced to leave their country and move to Germany, for the purpose to collect German Social Security benefits.

The Agreement of January 7, 1976, is generally based on the German-American Treaty of Friendship, Commerce, and Navigation of October 29, 1954. The preamble of this treaty says that the German party should act in the same way as the American party, since the Treaty is "establishing mutual rights and privileges, reciprocally accorded".

Sorry to say, in the case described above, reciprocity by the German party is not applied.

The only way to correct this failure and injustice is, to drop or modify chapter 4, point (a), of the Final Protocol to the Agreement of January 7, 1976, before ratification by the U.S.-Congress.

Therefore, I kindly ask you Mr. Chairman, to use your influence and your activity, with the goal to change or modify chapter 4, point (a) of the Final Protocol of the Agreement of January 7, 1976, before its ratification.

Only when changing the quoted point of the Final Protocol, the Agreement will really solve all problems to the mutual satisfaction of the citizens and pensioners of both Contracting States.

Should you need any further information in connection with my comment and petition, please contact me at your convenience.

I respectfully urge you to give this matter your prompt attention.

I am looking forward to hearing from you in the near future.

Sincerely,

WALTER H. DUDA.

TEANECK, N.J., May 12, 1977.

HON. JAMES A. BURKE,
Chairman, Subcommittee on Social Security,
House Office Building, Washington, D.C.

DEAR MR. BURKE: Please permit me to comment briefly on the forthcoming meetings of your Subcommittee on Social Security with reference to the German American agreement on totalization.

As I submitted my comments with respect to this bill last year, I should like these remarks to be incorporated as part of this year's record.

Since submitting my letter in support of the Totalization Bill, I have experienced, in representing a widow residing in the United States, serious problems with respect to the application of the German American Friendship Treaty of October 1954. I can truly say that unless I am successful in the German Social Security Courts, the aforesaid Treaty of 1954 is tantamount to a nullity as far as the German Social Security authorities are concerned in so far as said Treaty sought to protect USA Nationals from discrimination by the German Social Security system. It is, therefore, of utmost importance to my client, the widow, and I would suggest perhaps additional several hundred thousands of former German citizens now residing in the U.S., that the Totalization Bill be passed by the Congress at this session. I view the mechanism of the protocols to the agreement as one way of negotiating additional provisions to the agreement with Bonn in order to eliminate as many injustices as are now present and which are not explicitly covered by the German American Friendship Treaty of 1954.

Due to historic differences, different legal systems, nuances in interpretation, etc., the aforesaid Treaty of 1954 is totally inadequate. The Totalization Bill before your Committee is an important step in the right direction.

I will not burden you with the complex legal problems of the particular case now pending before the Sozialgericht, but I can assure you that it has hair-

raising elements fit for some of the lurid exposé weekly journals. Such wrongs should be avoided at all costs and I, therefore, support the immediate passage of the Totalization Bill.

Respectfully yours,

MAX N. OSEN.

[Mailgram]

SPERRY-RAND CORP.,
New York, N.Y., July 19, 1977.

Hon. JAMES A. BURKE,
Chairman, Subcommittee on Social Security, House Committee on Ways and Means, Washington, D.C.

It is our understanding that your subcommittee is currently holding hearings on a Social Security omnibus bill which includes a provision allowing our President to enter into Social Security agreements with foreign nations.

Sperry Rand Corporation currently employs 245 Americans, transferred abroad, who participate in both U.S. Social Security and foreign social security programs. This duplication of coverage creates an unwarranted expense both for employees and their employer, especially since the vast majority of these employees will never receive a penny from these foreign programs which we are subsidizing.

In view of the foregoing, we urgently request your support of the provision in the subject bill allowing the President to eliminate this duplication of coverage and unnecessary expense.

T. V. HIRSCHBERG,
Staff Vice President-Insurance.

NEW YORK, N.Y., July 20, 1977.

Re "International Social Security Act of 1976," USA-FRG Agreement on Social Security.

Hon. JAMES A. BURKE,
Chairman, Subcommittee on Social Security, House Committee on Ways and Means, Washington, D.C.

DEAR SIR: With reference to the above subject matter I am submitting this statement as an independent interested party. However, I feel that I am speaking also for several hundred or thousand USA citizens facing the same adverse situation as I do.

I find that some provisions of the USA-FRG agreement on Social Security before your Subcommittee are discriminatory against certain American citizens who suffered persecution and great material losses from the Nazis in different Central European countries during World War II, and later emigrated to the United States to become its citizens.

According to Par. 5 of the agreement, Social Security benefits should be paid by the Social Security Administration of the FRG to entitled refugees having a permanent residence in the Territory of the U.S.A. regardless of payment restrictions linked to permanent residency in the territory of the FRG (Par. 3, Section b.).

This favorable ruling of Par. 5 is, however, partly invalidated by Par. 4a of the Final Protocol attached to the agreement according to which the present German legal rules regarding Social Security benefits not covered by contributions in agreement with German federal laws remain in force unchanged. That means that former refugees from Central European countries who are German nationals or belong to the German language and cultural circle (Deutsche Kulturgemeinschaft) having worked outside the territory of the FRG before their emigration and therefore contributed solely to the Social Security administration of their respective countries, can actually receive Social Security benefits from the Social Security Administration of the FRG only if they take permanent residence in the territory of the FRG—provided, of course, that the German Social Security Administration grants them these benefits.

According to the original German regulations, only refugees who were German nationals were entitled to receive Social Security benefits from the FRG Social Security Administration. Therefore, the overwhelming majority of the refugees of German nationality from Central European countries settled in the FRG since World War II in order to take advantage of these Social Security benefits.

Refugees not being German nationals, but belonging to the German language and cultural circle (e.g. Jews) who suffered Nazi persecution were originally excluded from this favorable treatment as far as Social Security benefits are concerned until the year 1971.

On December 22, 1970 a "Law related to changes and complements to the rules concerning the restitution of national socialistic injustices in Social Security Insurance" (WGSVG) was enacted which extended the circle of Social Security beneficiaries of refugees to include employees belonging to the German language and cultural circle. Since then a number of refugees belonging to this group were granted Social Security benefits by the Social Security Administration of the FRG even if their benefits were only covered by contributions to Social Security Administrations outside the territory of the FRG. However, to receive actual payments citizens e.g. of the U.S.A. residing in America have to move to the FRG, otherwise they are deprived of their benefit payments already granted to them by the German federal authorities.

Until the year 1971 refugees belonging to the German language and cultural circle had no possibility and no hope to receive Social Security benefits covered only by contributions in their countries of origin from the German Social Security Administration even if they settled down in the territory of the FRG. It was indeed beyond their imagination that this situation will ever change for the better. For this reason most of them emigrated to other countries, among them to the U.S.A.

The German law referred to (WGSVG) provides for Nazi victim refugees belonging to the German language and culture circle the same Social Security rights as for refugees who are German nationals. Thus, formally our FRG Social Security (in fact restitution) rights seem to be equal to those of the German nationals, but in the essence the delay of 20 to 25 years in the enactment of the law causes substantial differences in its effects and discrimination against the non-German nationals.

What was a terrific advantage and a big incentive to settle down and work in the FRG e.g. 20 years ago for a German national becomes in most of the cases a hardship for old Nazi victims U.S.A. citizens now, 20 years later, i.e. to move to the FRG only to collect the Social Security due to them from the FRG Social Security Administration. Many of them are sick, have their relatives, friends here and therefore it becomes in most of the cases a very difficult decision to move at this advanced age again. No wonder that for these reasons many of them did not even apply for their FRG Social Security benefits.

When on March 31, 1957, after the Hungarian uprising, I left Hungary at the age of 57 and came to Vienna, Austria, I left behind me the fruits of more than 30 years of labor as a professional engineer. At that time I was not entitled to Social Security benefits from the FRG although I suffered Nazi persecution and belonged to the German language and cultural circle, but was not a German national. Had the German Social Security regulations then included me as a beneficiary, I could have considered to settle down in Austria or in the FRG to receive Social Security benefits from my 65th birthday on. Since, however, this was not the case at that time, I decided to emigrate to the U.S.A. where I arrived on July 2, 1958. I was already in my 58th year and had to provide for my wife, my mother-in-law then at the age of 72, and for my two children of mine who were college students.

I am 76 now and since 1963 an American citizen. I had only eight years until my retirement age (65) and now after more than 19 years in the U.S.A. I should be compelled to move to the FRG in order to receive actual benefit payments due to me from the German Federal Social Security Administration, if the agreement before your Committee is enacted in its present form.

After having been forced by circumstances beyond my control to build up an existence from scratch four times in my life, I would be exposed to utmost hardship to leave my country, the U.S.A. which I love to collect Social Security benefits (recte: restitution) accorded to me by the Social Security Administration of the FRG. The provisions of Par. 4a of the Final Protocol are in violation of my human rights guaranteed by the Constitution of this country and enacted also by both, the U.S.A. and the FRG in the Helsinki Agreement of 1976.

The Supreme Court of the U.S.A. ruled as unconstitutional any deprivation of rights to its citizens due to their absence from its territory (e.g. loss of citizenship, loss of Social Security benefits, etc.). Any international agreement of the U.S.A. with a foreign country according to which American citizens are deprived of Social Security benefit payments accorded to them by the administration of the

foreign government solely because they reside in the territory of the U.S.A. must be regarded as unconstitutional the more.

May I also call to your attention that the Social Security Agreement between the Government of the Austrian Federal Republic and the Government of the FRG of 1966 secure preferential treatment to refugees without any restrictions in contrast to Par. 4a of the Final Protocol of the Agreement under consideration before your Committee. Par. 3a of the Austrian-FRG Agreement on Social Security clearly states that Social Security benefits have to be paid to refugees who are Austrian citizens and reside in Austria, as if their residence would be in the territory of FRG including West Berlin.

Thus, the principle of most favorable treatment is also violated by the U.S.A.—FRG Agreement on Social Security before your Committee.

I am perfectly convinced that the USA—FRG Agreement on Social Security would be different and its provisions would have taken care of the welfare of U.S.A. citizens belonging to my group had the American party be aware of these grievances at the time of its signature on January 7, 1976.

I also realize that it is unrealistic to ask for the abolition of Par. 4a of the Final Protocol concerning Nazi victim refugees at the present stage of affairs. Therefore, I only propose the passage of the "International Social Security Agreement of 1976" and the final acceptance of the USA—FRG Agreement on Social Security with the clear understanding that by means of an Administrative Agreement at least the following important adjustments will be implemented:

(1) The restrictions of Par. 4a of the Final Protocol of the USA—FRG Agreement on Social Security concerning Nazi victim refugees who are USA citizens and who are entitled to FRG Social Security benefits on the basis of the FRG law known as WGSVG will be abolished, i.e. their total Social Security benefits will be paid while residing in the USA.

(2) The deadlines for application to grant permission to make voluntary contributions both under the WGSVG as well as RRG laws should be reopened for a reasonable time period after the ratification of the agreement.

If I can be of any further help or you require further information, please let me know. Your assistance in this important matter is highly appreciated, and I thank you for your consideration.

Sincerely,

MARCEL STEIN, P.E.

SULZER BROS., INC.,
New York, N.Y., July 18, 1977.

HON. JAMES A. BURKE,

Chairman, Subcommittee on Social Security, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that the subcommittee you are heading is presently conducting public hearings on the passage of a bill that would allow the U.S. President to enter into bilateral social security agreements with other nations.

While I understand that this bill, of course, would serve in the first instance the interests of multinational U.S. corporations, it will have an equally substantial impact on American subsidiaries of foreign based corporations. I feel that this legislation is a must in today's age and your committee should do everything in your power to get the present bill passed. I believe that a social security bill of this nature is in the interest of all nations concerned and will help promote free trade which is the backbone of the free enterprise system.

Very truly yours,

F. VAN DER SCHAAR, *President.*

Mr. COTTER. Our next witness is Ms. Jean Marie Kelly.

**STATEMENT OF JEAN MARIE KELLY, APPEARING ON BEHALF
OF CATHERINE M. KELLY, THE ESSEX COUNTY BOARD OF
EDUCATION EMPLOYEES' PENSION FUND**

Ms. KELLY. I will summarize my statement for the sake of brevity and I request that my written statement be made a part of my official presentation.

Mr. COTTER. Your full statement will be made a part of the record.

Ms. KELLY. I am Jean Marie Kelly, a resident of the District of Columbia appearing here on behalf of my mother, Mrs. Catherine Kelly. She has been called away on a foreign business affair and I am here to take her place, if that is agreeable to you.

The public school district employees of Essex County, N.J., belong to a closed pension fund of a countywide system that is not coordinated with social security or with any other pension system in the State. In New Jersey, almost all public employees are covered by social security excepting most members of the Police and Firemen's Retirement System, the State Police Retirement System and the Prison Officers Pension Fund, and several other locally administered pension systems as well.

I represent school employees in Essex County who have been seeking social security coverage since 1959. Almost a generation has gone by since the first efforts were made to be included in a system that is almost universally extended to working people in the private sector. The Board of Education Employee's Pension Fund of Essex County has a total of 5,402 active members. It includes 1,650 men and 3,752 women—in other words more than twice as many female school employees as male. The average age for both sexes is 46 years, meaning that were they to have social security coverage, the system could anticipate a contributory tax for almost a whole generation.

A study of the Essex County pension fund reveals that these members do not earn in their public sector employment the maximum amount needed to be eligible for the maximum social security pension. The average salary for men in the Board of Education Employee's Pension Fund is \$9,652 while for women it is \$5,592. Simple arithmetic shows that the men make almost 73 percent more than women, yet many of these women have dependent children, elderly parents, incapacitated husbands who depend on them for support.

The characteristic of more female employees than male workers in this pension is a very important one in that retirement of a married woman with social security coverage means that she elects to obtain a pension based on earnings of either her husband or her own whichever is greater.

Usually her husband's benefits are more. A married woman is eligible for pension from social security even if she has never worked a day, provided her spouse has met the required number of quarters. This can be viewed as a financial windfall.

It is true that a fair percentage of women in the Essex County Pension Fund have husbands who are gainfully employed and covered by social security in their field of endeavor, and who may reasonably expect to receive benefits based solely on the earnings of their spouse.

How about that percentage of single employees who do not have social security yet and who have worked almost all of their adult years in the public sector? They are faced with existing on a pension below poverty level, they are ineligible for medicare, and they must hope that some kind-hearted soul will do the necessary when they leave this life.

The Community Services Administration provides the following information as a source for comparison of characteristics between the poor of this country and the public sector workers in Essex County. Children under 18 comprise 42 percent of the poor and 53 percent of

such children are in families headed by a woman. Families headed by persons aged 65 or over comprise 15 percent of all poor families. Families headed by women under 65 years of age comprised 43 percent and families headed by men under age 65 comprised 42 percent.

The House of Representatives has a bill, H.R. 5357 pending that would add the words New Jersey to the list of States who offer the divided option for social security coverage. A similar bill, S. 1093 is also in the Senate. The entire New Jersey delegation introduced identical legislation in the 94th Congress but no appropriate legislation in this matter took place despite every effort to schedule comprehensive social security proposals. The 93d Congress saw an amendment die in the Senate due to the fact that this legislation was not reported by a conference committee due to the unusual legislative situation which existed at that time.

Last year in April, Mrs. Elaine Ellmers, chairperson of the Essex County Committee for Social Security, and Mrs. Kelly delivered to Congressman Al Ullman's office 60 pounds of signed petitions totaling almost 6,000 signatures of registered voters—visible proof of the serious intent and desire for coverage by the members of the county pension fund. At that time, Congressman James Burke of Massachusetts extended an invitation to testify before the Subcommittee on Social Security of the Committee on Ways and Means concerning public hearings on coverage and termination of coverage of governmental and nonprofit organization employees under the social security system. This gesture alone gave a tremendous lift to the morale of these workers. They felt that at least someone had heard their pleas to be treated as equals with their fellow workers, but unfortunately, their hopes were again dashed on the rocks of politics.

Hearings investigating the effects of the attempted termination of benefit protection by groups of employees of State and local governments have been going on for some time now. You are concerned about the financial and programmatic integrity of the trust funds of social security due to the influence of termination of coverage and withdrawal of these workers. Yet, here is a group actively seeking to be covered by social security and the biggest hurdle in the path is composed of their own elected officials who by an affirmative vote could make it possible.

Were you to put yourself in the place of the people whom I represent, I will tell you just what you could expect to retire on were you to be employed in the public school system in Essex County, N.J.—22 percent would retire with a pension under \$1,000; 27 percent would have a pension under \$1,999; 20 percent would retire on \$2,999 or less; 8 percent would receive less than \$4,000 and 8 percent under \$4,999. At this very time, there is a pensioner in our fund receiving the sum of \$9.50 per month.

What figure is considered poverty level? The Government statistics for the poverty level is \$5,500 for a family consisting of a father, mother, and two dependent children. This means that 85 percent of the retirees in the board of education employee's pension fund of Essex County are expected to exist on below-poverty level pensions, and, in their old age, will be subjected to the indignity of having to seek welfare in order to exist. It becomes impossible to maintain the

very homes they have struggled to hold together all of their working lives.

A number of references have been made concerning the retirement pension these public sector employees anticipate upon completion of the pension fund requirements and remarks have been focused in that direction up to this point. However, there is another factor to be dealt with—disability benefits to both the worker and his family.

Disability and illness can bankrupt almost any one of us. To prevent a citizen from enjoying a medical benefit due to a lack of coverage is to compound a social problem that can rip apart the very seams of the family structure. Private medical coverage is familiar to us all.

The fine print which all private medical insurance policies carry usually list the exclusions which far outnumber the inclusions, and invariably these policies leave both the proverbial front door as well as the back door open by which they may exit, gracefully as well as legally, when confronted with unorthodox medical conditions concerning the policyholder. Social security spells out in no uncertain terminology what is covered under disability benefits and Medicare.

The citizens seeking to be included in social security coverage are tired of hearing that their elected representatives are planning to introduce bills at "opportune moments." Reciprocity theories hold no interest for them. To be perfectly blunt, there is only one word that can be used to describe the conclusion they have reached—that word is disgust.

I would urge you gentlemen to take some action upon their requests.

They have been disappointed and I think they are getting very disgusted and angry. They are asking for equal treatment. They would like to belong to social security at a time when people are considering the future of social security itself. I appreciate this opportunity to appear here. If you have any questions, I would be more than happy to answer them.

[The prepared statement follows:]

STATEMENT OF CATHERINE M. KELLY CONCERNING EXCLUSION OF PUBLIC EMPLOYEES FROM SOCIAL SECURITY COVERAGE

The public school district employees of Essex County, New Jersey belong to a closed pension fund of a county-wide system that is not coordinated with Social Security or with any other pension system in the state. In New Jersey almost all public employees are covered by Social Security excepting most members of the Police and Firemen's Retirement System, the State Police Retirement System and the Prison Officers Pension Fund, and several other locally-administered pensions systems as well.

I represent school employees in Essex County who have been seeking Social Security coverage since 1959. Almost a generation has gone by since the first efforts were made to be included in a system that is almost universally extended to working people in the private sector. The Board of Education Employees' Pension Fund of Essex County has a total of 5,402 active members. It includes 1,650 men and 3,752 women—in other words more than twice as many female school employees as male. The average age for both sexes is 46 years, indicating that they have a work-life expectancy of almost 20 years, meaning that were they to have Social Security coverage the system could anticipate a contributory tax for almost a whole generation.

A study of the Essex County pension fund reveals that these members do not earn in their public sector employment the maximum amount needed to be eligible for the maximum Social Security pension. The average salary for men in the Board of Education Employees' Pension Fund is \$9,652 while for women it is \$5,592. Simple arithmetic shows that the men make almost 73 percent more than women, yet many of these women have dependent children, elderly parents, in-

capacitated husbands who depend on them for support. Their lifetime is spent struggling to meet the demands of day-to-day living.

The characteristic of more female employees than male workers in this pension system is a very important one in that retirement of a married woman with Social Security coverage means she elects to obtain a pension based on earnings of either her husband or her own whichever is greater. Usually her husband's benefits are more. A married woman is eligible for pension from Social Security even if she never worked a day, provided her spouse has met the required number of quarters. This can be viewed as a financial windfall. A married working woman means she contributes her fair share to the Social Security fund and upon retirement or disability should be entitled to benefits extended under the plan both to her and her survivors. It is true that a fair percentage of women in the Essex County Pension Fund have husbands who are gainfully employed and covered by Social Security in their field of endeavor, and who may reasonably expect to receive benefits based solely on the earnings of their spouse. Concomitantly, a fair percentage of the male employees of this pension system have spouses who are employed and are covered by social insurance. But how about that percentage of employees who do not have Social Security yet and who have worked almost all of their adult years in the public sector providing the necessary services to school children, to those who teach them, and to those who administer the system. How are they to achieve any semblance of supplemental income in the twilight years of their lives? They are faced with existing on a pension below poverty level, they are ineligible for Medicare, and they must hope that some kind-hearted soul will do the necessary when they leave this life otherwise Potter's Field is their ultimate destination.

The Community Service Administration provides the following information as a source for comparison of characteristics between the poor of this country and the public sector workers in Essex County. Children under 18 comprise 42 percent of the poor and 53 percent of such children are in families headed by a woman. Families headed by persons aged 65 or over comprise 15 percent of all poor families. Families headed by women under 65 years of age comprised 43 percent and families headed by men under age 65 comprised 42 percent.

The most incongruous aspect of the whole picture is this. Two people go to work every day in the same building, under the same supervision, are paid by the same tax dollars, share the same collateral entitlements yet one is eligible for Social Security benefits and the other is denied these same benefits solely because they belong to different pension systems. To my mind there is an ever-gnawing question as to the legality of this whole situation. Are we not all supposed to be equal under the law?

The House of Representatives has a bill pending that would add the word New Jersey to the list of states who offer the divided option for Social Security coverage. A similar bill is also in the Senate. The entire New Jersey delegation introduced identical legislation in the 94th Congress but no appropriate legislation in this matter took place despite every effort to schedule comprehensive Social Security proposals. The 93rd Congress saw an amendment die in the Senate due to the fact that this legislation was not reported by a conference committee due to the unusual legislative situation which existed at that time.

Last year in April, Mrs. Elaine Ellmers, Chairperson of the Essex County Committee for Social Security, and I delivered to Congressman Al Ullman's office 60 pounds of signed petitions totaling almost 6,000 signatures of registered voters—visible proof of the serious intent and desire for coverage by the members of the County pension fund. At that time Congressman James Burke of Massachusetts extended an invitation to testify before the Subcommittee on Social Security of the Committee on Ways and Means concerning public hearings on coverage and termination of coverage of governmental and nonprofit organization employees under the Social Security System. This gesture alone gave a tremendous lift to the morale of these workers. They felt that at last someone had heard their pleas to be treated as equals with their fellow workers, but unfortunately their hopes were again dashed on the rock of politics.

Since Social Security coverage for employees of the political subdivision known as Essex County is exercised at the option of the State and the elected members of the Senate and House of Representatives of New Jersey have seen fit to present again bills proposing the addition of the words, "New Jersey", to the present law so the divided option may be offered to public employees, it is only fair and reasonable for the Members of Congress to permit passage of this legislation rather than impede it, as has been the case in the past. Regardless

of the unresolved constitutional question as to whether the Federal Government can levy a social security tax on employees by States and their political subdivision, the very concept of public employees participating voluntarily has helped to avoid any constitutional issue arising from mandated coverage.

Hearings investigating the effects of the attempted termination of benefit protection by groups of employees of State and local governments have been going on for some time now. You are concerned about the financial and programmatic integrity of the trust funds of Social Security due to the influence of termination of coverage and withdrawal of these workers. Yet, here is a group actively seeking to be covered by Social Security and the biggest hurdle in the path is composed of their own elected officials who by an affirmative vote could make it possible. Why must this issue be made a veritable political football? Why must it be reduced to a case of "You scratch my back and I'll scratch yours." The system is concerned with those who wish to withdraw while it ignores those who wish to participate! Attempts to pass legislation should be an honest effort and not a hollow gesture.

Were you to put yourself in the place of the people whom I represent, I will tell you just what you could expect to retire on were you to be employed in the public school system in Essex County, New Jersey. Twenty-two percent would retire with a pension under \$1,000; 27 percent would have a pension under \$1,999; 20 percent would retire on \$2,999 or less; 8 percent would receive less than \$4,000 and 8 percent under \$4,999. At this very time there is a pensioner in our fund receiving the sum of \$9.50 per month! Surely you will concede that this is a rather startling figure. One might compare it to a tankful of gas in a small car. Truly, it is a sad commentary upon our society that can witness such a minuscule reward for laboring in the public vineyard.

What figure is considered poverty level? The Bureau of Labor and Industry publishes \$5,500 for a family consisting of a father, mother and two dependent children. This means that 85 percent of the retirees in the Board of Education Employees' Pension Fund of Essex County are expected to exist on below poverty level pensions and, in their old age, will be subjected to the indignity of having to seek welfare in order to exist. It becomes impossible to maintain the very homes they have struggled to hold together all of their working lives.

In all candor, and with a sense of extreme delicacy, it should be related to you the observations of the people who give voice with increasing frequency to their discontent and disillusionment with those who have permitted legislation which would have alleviated their financial burden to die through inaction while during the same time-frame witnessed the enhancement of their own salaries and pensions. It can only be summed up as a callous disregard for their constituents and a disdain for the human needs of their fellow man. There is no desire to alienate or jeopardize any sympathetic feeling that may be generated at this time. It is the sense of urgency for the situation that dictates the necessity for frankness at the expense of diplomacy. We are talking about the very necessities of life and the plight these people find themselves in. Inflation has ravaged them and the employment picture of today precludes any change of jobs on their part whereby they might better their circumstance.

The evaluation by the accounting firm of Martin E. Segal Company of New York City, who is charged with the auditing responsibility of the Board of Education Employees' Pension Fund, is offered as a clinical testimony. This firm cites the employee characteristics with the following commentary:

"... in general the members of the Fund may suffer from the lack of Social Security coverage. As you know, the Social Security System is weighted in favor of the low paid worker. This weighting would certainly benefit most of the members of the Fund.

"Lack of coverage may not affect all employees equally. Those who are hurt most are those career employees who have not obtained Social Security coverage, either through an outside job or in the case of a female employee by being married to a person who is covered by Social Security.

"Employees with shorter service—average service is 6 years—may suffer gaps in protection even if they obtain Social Security coverage in another job. Finally, older employees—average age is 46—will suffer loss in Social Security benefits depending on the extent to which they obtained coverage under Social Security at an earlier age or through a second job. In particular, if they are members of the Fund in later life and not currently insured, they may suffer loss of disability benefits.

"While lack of Social Security coverage affects members in various ways, it would nonetheless be in their best interests to be covered thereby eliminating the potential for losses of benefits or gaps in protection."

These comments may be found in a memorandum under date of March 30, 1977 which is appended to the prepared statement that is offered to the Committee.

A number of references have been made concerning the retirement pension these public sector employees anticipate upon completion of the pension fund requirements and remarks have been focused in that direction up to this point. However, there is another factor to be dealt with—disability benefits to both the worker and his family. This is a tremendously vital factor in the financial affairs of a worker. The work force of our country has seen the menial laborer build empires for financiers only to expire in the poverty in which he was born. Disability and illness can bankrupt almost any one of us. To prevent a citizen from enjoying a medical benefit due to a lack of coverage is to compound a social problem that can rip apart the very seams of the family structure. Private medical coverage is familiar to us all. The fine print which all private medical insurance policies carry usually list the exclusions which far outnumber the inclusions, and invariably these policies leave both the proverbial front door as well as the back door open by which they may exit, gracefully as well as legally, when confronted with unorthodox medical conditions concerning the policy holder. Social Security spells out in no uncertain terminology what is covered under disability benefits and Medicare.

The members of this Committee have heard reference made by others concerning the event of windfall benefits to some and the burden this places on those who contribute to the system. Certainly there will be a period of windfalls for a small percentage of people. This is unavoidable primarily due to the age factor and low earning capacity of these people. It is a fact of life and is not an uncommon one. Remember, if you will, that the original design of this plan is revealed in its very title of "Old Age, Survivors and Disability Insurance." The nomenclature of windfall may be the tag given to a few, but to the many it could best be described as a Godsend.

The citizens seeking to be included in Social Security coverage are tired of hearing that their elected representatives are planning to introduce bills at "opportune moments." Reciprocity theories hold no interest for them. To be perfectly blunt, there is only one word that can be used to describe the conclusion they have reached—that word is disgust. You are playing with their future and there is a strong moral, and even perhaps a legal obligation, resting upon you to alleviate their predicament and thereby contribute to the good and welfare of the people. The blame for inaction may be left at only one place and that is at the doors to the halls of Congress. These people are public servants just as you are. Granted their degree of service is not as illustrious, nevertheless it is a public service.

Many of the men have served in the armed forces when they were needed and their families spent lonely and frightening days awaiting their return and you would continue to deny them their right to economic security as they approach that period of life when their earning powers become so greatly diminished due to the dictates of age.

How much documentation do you require to pique your interest in this matter? What impetus is necessary to stir you to a concerted action? We have a file full of letters, telegrams and telephone memos from numerous senators and members of Congress telling us of their sympathy and concern, and how they are keeping it all in mind and reviewing our suggestions. Yet, year after year nothing is done. These public employees are righteously indignant and shall tolerate this condition no longer without taking other methods of action which in all probability will start at the polling booth.

Concomitant bills that go down in defeat due to Congressional adjournment certainly proves something and you alone can know the real answer. Politics are the life force and framework of our society but these same politics are perpetrating and perpetuating an outrage that is tantamount to financial rape.

Only within the last few weeks the Speaker of the House called upon the legislators to "have guts enough" to vote themselves a pay raise. Well, Gentlemen, so long as you have the intestinal fortitude for such action then a moral burden is placed this side of the table to insist that you have the same amount of courage and pass the legislation we seek instead of passing the buck year after year with feeble excuses for the callous disregard for the plight of the little people who sink lower and lower each year into a quagmire of economic distress.

When the inaction of our elected representatives permits a denial of coverage to non-profit organization employees, it then places local government in the untenable role of being an unequal opportunity employer since taxes are the source of the wages paid for services rendered. You see before you a prime example of government threatening the very way of life of hundreds of people. We are not asking nor seeking that coverage be unilaterally imposed—all we want is the opportunity to exercise a democratic choice under the aegis of a divided option. To continue to prevent this right places you above the people and not of the people. I am sure that such is neither your intent nor desire, but rather an unfortunate circumstance which you will seek to remedy with alacrity.

CONCLUSION

Thank you for your patience and interest and courteous reception. It has been an honor for me to appear here today. Mrs. Kelly deeply regretted her inability to appear before you and has asked me to convey to you her sincere appreciation for your concern together with her most cordial greetings.

MARTIN E. SEGAL Co.,
New York, N.Y., March 30, 1977.

Memorandum to: Board of Education employees' pension fund of Essex County.
From James N. Kamel.

Subject: Employee characteristics as related to social security coverage.

We received data as of June 30, 1976 for 5,402 employees who are members of the Fund. The general characteristics of the group are as follows:

	Number	Average age	Average service	Average salary
Men.....	1,650	46½	6	\$9,652
Women.....	3,752	46	6	5,592
Total.....	5,402	46	6	6,833

These characteristics suggest, although they do not prove, that in general the members of the Fund may suffer from lack of Social Security coverage. As you know, the Social Security System is weighted in favor of the low paid worker. This weighting would certainly benefit most of the members of the Fund.

Lack of coverage may not affect all employees equally. Those who are hurt most are those career employees who have not obtained Social Security coverage, either through an outside job or in the case of a female employee by being married to a person who is covered by Social Security.

Employees with shorter service—average service is six years—may suffer gaps in protection even if they obtain Social Security coverage in another job. Finally, older employees—average age is 46—will suffer loss in Social Security benefits depending on the extent to which they obtained coverage under Social Security at an earlier age or through a second job. In particular, if they are members of the Fund in later life and are not currently insured, they may suffer loss of disability benefits.

While lack of Social Security coverage affects members in various ways, it would nonetheless be in their best interests to be covered thereby eliminating the potential for losses of benefits or gaps in protection.

MARTIN E. SEGAL Co.,
New York, N.Y., April 6, 1977.

MR. ROBERT LAVIGNE,
Chairman, Cedar Grove Board of Education,
122 Stevens Avenue, Cedar Grove, N. J.

DEAR BOB: The following is the information which the Board requested be supplied to Elaine Ellmers. This information reflects the general characteristics of the employees of the Fund as of June 30, 1976.

	Number	Average age	Average service	Average salary
Active members:				
Men.....	1,650	46½	6	\$9,652
Women.....	3,752	46	6	5,592
Total.....	5,402	46	6	6,833
Retirees.....		Men 141	Women 345	Total 486
		Amount		
	Under \$1,000	Under \$1,999	Under \$2,999	Under \$3,999
Pensions (cumulative percentages).....	22	49	69	77
				85

The largest pension paid by the fund in the year ended July 30, 1976 was \$25,917; the smallest was \$114.

In addition to these figures, it should be noted that 877 custodians—16 percent of all active employees—are covered by Social Security. These are employees whose positions at one time were included in the New Jersey Teachers Retirement System which was closed to nonprofessional employees by legislation in 1966. Although these positions were not covered by the Teacher systems after that date, the positions continued to be covered by Social Security.

I hope that this information will be of assistance. If you have any questions, do not hesitate to call.

Sincerely,

JAMES N. KEMEL,
Senior Associate.

Mr. COTTER. Thank you very much, Ms. Kelly.

How many people are affected in the Essex County area?

Ms. KELLY. 5,402 workers affected.

Mr. SCHULZE. You are asking to be included in that list of States?

Ms. KELLY. To be included. To have the option to belong to it. All it takes is adding the words "New Jersey" to the Social Security Act.

Mr. SCHULZE. Thank you for your presentation.

Mr. COTTER. Mr. Ketchum?

Mr. KETCHUM. Thank you very much for your presentation. I was not aware that New Jersey was exempted from operating in or out of social security. So, I have had a little education. I was kind of interested in some of your comments on the pension plan that you have in Essex County. How much do you have to contribute? What is the employee contribution to the pension funds there?

Ms. KELLY. I don't have the statistics on hand. I can get them for you.

Mr. KETCHUM. Do you contribute?

Ms. KELLY. Yes.

Mr. KETCHUM. And I think you mentioned a rather substantial number of people receiving less than \$1,000 a year from the pension fund?

Ms. KELLY. Twenty-two percent. That is almost 1,000 people.

Mr. KETCHUM. There is always the possibility that your county government would opt not to be covered under social security.

Ms. KELLY. They would just like that opportunity.

Mr. KETCHUM. I thank you very much for coming here.

Mr. COTTER. Thank you very much, Ms. Kelly.

Our next witness is Fred Walker.

**STATEMENT OF FRED WALKER, EXECUTIVE SECRETARY,
MISSISSIPPI PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

Mr. WALKER. I am Fred Walker, I would like for my full statement to be entered into the record. I will summarize it.

Thank you, Mr. Chairman. Ladies and gentlemen, I am Fred M. Walker, executive secretary, Public Employees' Retirement System of Mississippi, and also, I serve as vice president of the National Association of State Retirement Administrators and on the Executive Committee of the National Council of Teacher Retirement. I am accompanied by Representative Charles M. Deaton, chairman of the House Appropriations Committee, Mississippi House of Representatives and member of the Board of Trustees of Public Employees' Retirement System; Mr. P. L. Douglas, first assistant of the attorney general of the State of Mississippi; and Mr. Thomas H. Collier, administrative assistant, Public Employees' Retirement System. We wish to thank you for your invitation to present these remarks today.

We are here today to ask your assistance in passing H.R. 2480 which adds the name "Mississippi" after "Maryland" in amending section 218(p)(1) of the Social Security Act. The effect of the passage of this amendment would be to extend social security coverage eventually to 2,700 firemen and policemen in 17 cities of Mississippi.

Subsection (d)(1) of the Social Security Act prohibits extension of social security coverage to members of a local retirement system that was in effect when the State entered into an agreement with the Social Security Administration. Subsection (d)(5)(A) specifically excludes policemen's and firemen's positions from coverage. The State of Mississippi entered into an agreement with the Social Security Administration on July 2, 1952, which extended social security coverage to public employees in Mississippi. This agreement also excluded firemen and policemen who were already members of an existing local system. At that time, local retirement coverage was considered adequate for firemen and policemen by the members themselves and by the Social Security Administration. Since that time through failure of the cities to provide adequate funding it was determined in 1975 that all 17 disability and relief funds for firemen and policemen were actuarially unfunded. Therefore, in the 1976 session of the Mississippi Legislature House Bill 1471 was passed authorizing each city to terminate their firemen and policemen retirement systems for new members in the systems and in turn were authorized to enter into agreements with the Public Employees' Retirement System of Mississippi to provide social security and State retirement annuity to the new firemen and policemen who were employed after July 1, 1976.

Sixteen of the cities entered into an agreement with the public employees' retirement system to extend State retirement annuity to the new firemen and policemen. The public employees' retirement system cannot, however, provide social security for them without the assistance of Congress in passing H.R. 2480. During the last year, each of the 16 cities has been withholding from the new firemen's and police-

men's salaries an amount equivalent to social security contributions and has been matching this amount subject to passage of H.R. 2480. The city officials, the firemen and policemen of the cities and the board of trustees of the public employees' retirement system requests passage of H.R. 2480.

It is our feeling that since we were assisted in the preparation of the amendment by two members of the staff of the Social Security Administration, Mr. Harry Stahmer, acting director, Division of Coverage, Bureau of Retirement and Survivors Insurance and Mrs. Helen Cooper, Director, Interagency Public Concerns Staff, that the Secretary of Health, Education, and Welfare will not oppose passage.

These two staff members of the Social Security Administration met in conference here in Washington with staff members from each of the offices of our Mississippi Congressional Delegation, along with Mr. James W. "Bill" Kelley, professional counsel of the House Ways and Means Committee and Mr. Douglas, Mr. Collier and myself on July 27, 1976, to prepare the proper legislation for Congress. S. 3717 was filed by Senators Eastland and Stennis in 1976 but due to a heavy calendar did not receive passage. This bill has been refiled as H.R. 2480. We believe this amendment will be supported by the Social Security Administration. There is also a precedent in 218(p) (1) where 21 States have requested and received approval of social security coverage for their firemen and policemen. We request that the same privilege of social security coverage be given our firemen and policemen in the State of Mississippi as the other 21 States. We respectively ask your assistance in passage of H.R. 2480.

In a social security matter not related to the previous remarks, we wish to go on record as opposing annual reporting and more frequent deposits. Mr. Gerald P. Slaybaugh of Kansas, vice president of the National Conference of State Social Security Administrators, is here today representing the National Conference in detailed testimony in opposition to this change. Therefore we wish to limit our remarks to advising that under the present laws of the State of Mississippi (as with many other States) the employers' share of matching funds for social security is obtained from taxes and cannot be remitted to the Social Security Administration without a current accounting of each dollar at the time of payment.

We have had a good working relationship of social security coverage of public employees in the State of Mississippi during the past 25 years with the State agencies, schools, and political subdivisions with no terminations. We ask on behalf of the State of Mississippi and the National Social Security and State Retirement Association that no change be made in wage reporting and contribution deposits.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF FRED M. WALKER, EXECUTIVE SECRETARY OF PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI

Thank you, Mr. Chairman. Ladies and gentlemen, I am Fred M. Walker, Executive Secretary, Public Employees' Retirement System of Mississippi, and also, I serve as Vice-President of the National Association of State Retirement Administrators and on the Executive Committee of the National Council of Teacher Retirement. I am accompanied by Representative Charles M. Deaton, Chairman of House Appropriations Committee, Mississippi House of Representa-

tives and member of the Board of Trustees of Public Employees' Retirement System. Mr. P. L. Douglas, First Assistant of the Attorney General of the State of Mississippi and Mr. Thomas H. Collier, Administrative Assistant, Public Employees' Retirement System. We wish to thank you for your invitation to present these remarks today.

I would like to submit my full statement for the record.

We are here today to ask your assistance in passing HR 2480 which adds the Name "Mississippi" after "Maryland" in amending Section 218 (p) (1) of the Social Security Act. The effect of the passage of this amendment would be to extend Social Security Coverage eventually to twenty-seven hundred Firemen and Policemen in seventeen cities of Mississippi.

Sub-section (d) (1) of the Social Security Act prohibits extension of Social Security coverage to members of a local retirement system that was in effect when the state entered into an agreement with the Social Security Administration. Subsection (d) (5) (A) specifically excludes policemen's and firemen's positions from coverage. The State of Mississippi entered into an agreement with the Social Security Administration on July 2, 1952, which extended Social Security coverage to public employees in Mississippi. This agreement also excluded firemen and policemen who were already members of an existing local system. At that time local retirement coverage was considered adequate for firemen and policemen by the members themselves and by the Social Security Administration. Since that time through failure of the cities to provide adequate funding it was determined in 1975 that all seventeen Disability and Relief Funds for Firemen and Policemen were actuarially unfunded. Therefore, in the 1976 Session of the Mississippi Legislature, House Bill 1471 was passed authorizing each city to terminate their Firemen and Policemen Retirement Systems for new members in the systems and in turn were authorized to enter into agreements with the Public Employees' Retirement System of Mississippi to provide Social Security and State Retirement Annuity to the new firemen and policemen who were employed after July 1, 1976. Sixteen of the cities entered into an agreement with the Public Employees' Retirement System to extend State Retirement Annuity to the new firemen and policemen. The Public Employees' Retirement System cannot, however, provide Social Security for them without the assistance of Congress in passing H.R. 2480. During the last year each of the 16 cities has been withholding from the new firemen's and policemen's salaries an amount equivalent to Social Security contributions and has been matching this amount subject to passage of H.R. 2480. The city officials, the firemen and policemen of the cities and the Board of Trustees of the Public Employees' Retirement System requests passage of H.R. 2480.

It is our feeling that since we were assisted in the preparation of the amendment by two members of the staff of the Social Security Administration, Mr. Harry Stahmer, Acting Director, Division of Coverage, Bureau of Retirement and Survivors Insurance and Mrs. Helen Cooper, Director, Inter-agency Public Concerns Staff, that the Secretary of Health, Education and Welfare will not oppose passage. These two staff members of the Social Security Administration met in conference here in Washington with Staff members from each of the offices of our Mississippi Congressional Delegation, along with Mr. James W. "Bill" Kelley, Professional Counsel of the House Ways and Means Committee and Mr. Douglas, Mr. Collier and myself on July 27, 1976, to prepare the proper legislation for Congress. S. 3717 was filed by Senators Eastland and Stennis in 1976 but due to a heavy calendar did not receive passage. This bill has been filed as HR. 2480. We believe this amendment will be supported by the Social Security Administration. There is also a precedent in 218 (p) (1) where 21 states have requested and received approval of Social Security Coverage for their firemen and policemen. We request the same privilege of Social Security Coverage for our firemen and policemen in the State of Mississippi as the other 21 states. We respectfully ask your assistance in passage of H.R. 2480.

In a Social Security matter not related to the previous remarks, we wish to go on record as opposing Annual Reporting and More Frequent Deposits. Mr. Gerald P. Slaybaugh of Kansas, Vice President of the National Conference of State Social Security Administrators, is here today representing the National Conference in detailed testimony in opposition to this change. Therefore, we wish to limit our remarks to advising that under the present laws of the State of Mississippi (as with many other states) the employers share of matching funds for Social Security is obtained from taxes and cannot be remitted to

the Social Security Administration without a current accounting of each dollar at the time of payment. We have had a good working relationship if social security coverage of public employees in the State of Mississippi during the past 25 years with the state agencies, schools and political subdivisions with no terminations. We think more frequent deposits and annual reporting will be costly to the state and contrary to state and local accounting history. We ask on behalf of the State of Mississippi and the National Social Security and State Retirement Association that no change be made in wage reporting and contribution deposits.

Each member of Congress from Mississippi has indicated his opposition to these changes and is either here with us today or has sent a staff member to represent him. We request your consideration in opposing Annual Reporting and More Frequent Deposits.

Thank you, Mr. Chairman.

Mr. COTTER. Thank you very much. We appreciate your coming here, sir, and I will certainly call it to the attention of the chairman as we get in the markup of the bill.

Thank you, sir.

[The following was submitted for the record:]

STATEMENT OF HON. DAVID BOWEN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MISSISSIPPI

Mr. CHAIRMAN: I appreciate the opportunity to make a statement before the Subcommittee in support of H.R. 2480, a bill to amend section 218 of the Social Security Act to include Mississippi among the States which may provide coverage for policemen and firemen under their agreements entered into pursuant to that section.

When social security coverage was extended to public employees in the State of Mississippi on July 2, 1952, firemen and policemen who were covered by a Municipal Firemen's and Policemen's Disability Relief Fund were excluded from the Social Security program. There are 17 cities in the State of Mississippi who were then excluded from social security because of the individual disability and retirement programs.

In 1976 an actuarial study authorized by the Mississippi Legislature found these 17 Municipal Firemen's and Policemen's Disability and Relief Funds mostly unfunded and extremely costly to continue. Therefore, a bill was passed in the State Legislature that year approving the termination of the local funds and participation in the social security program for state retirement annuity and social security coverage for new firemen and policemen.

Sixteen of these 17 cities have already signed agreements requesting participation in the social security program, and currently amounts are being withheld from these public employees' salaries equivalent to their social security contributions. If H.R. 2480 is enacted, the local agreement with these cities will be made retroactive to July 1, 1976.

In behalf of the Public Employees' Retirement System of Mississippi and the entire Mississippi delegation, I am asking your approval of this legislation. The purpose of H.R. 2480 is quite simply to add the State of Mississippi to the list of states covered under Section 218(d) (1), (d) (5), (A) of the Social Security Act. We will appreciate your consent to this bill so that the policemen and firemen who will be covered by Social Security can be assured of a disability and retirement program.

Mr. COTTER. Our next witness is Alice Daniel, the general counsel of the Legal Services Corp.

STATEMENT OF ALICE DANIEL, GENERAL COUNSEL, LEGAL
SERVICES CORP., ACCOMPANIED BY HOWARD ORENSTEIN
AND JAMES BRANSFIELD

Ms. DANIEL. My name is Alice Daniel and I am general counsel of the Legal Services Corp.

I am very pleased to accept the invitation of the committee to testify on behalf of the Legal Services Corp. concerning provisions of the Social Security Act affecting nonprofit tax-exempt organizations.

I have here with me today Mr. Howard Orenstein and Mr. Jim Bransfield of Hartford, Conn. They are connected with Neighborhood Legal Services of Hartford, Conn., which is one of the grantees of the corporation.

The Legal Services Corp. is a private, nonprofit corporation created by Congress in 1974 to support legal assistance in civil matters for those unable to afford an attorney. The corporation is supported by an annual appropriation from the Congress.

With those funds we make grants and contracts to legal services programs throughout the country that provide legal assistance to those unable to afford private counsel.

The legal services programs receiving financial assistance from the corporation are nonprofit corporations exempt from income tax under 501(c)(3) of the Internal Revenue Code. They are also exempt from the Social Security Act under sections 3121(b)(8), 3101(a), and 3111(a), although the act permits such organizations to waive their exemption from social security tax by filing a waiver certificate.

A problem in the Social Security Act became evident last year when the Internal Revenue Service took the position that employees of nonprofit organizations that had made payments without filing a formal waiver were not validly enrolled in the social security system and not entitled to benefits.

Congress addressed this problem by enacting Public Law 94-563, that amended section 3121(k) of the Internal Revenue Code. It insured coverage for the employees by providing that in cases where a nonprofit organization continued to collect and pay social security taxes a waiver of exemption would be deemed to have been filed.

While this legislation was necessary in order to validate the social security credits of affected employees, we believe it may have been enacted without full recognition of its impact with respect to the creation of retroactive tax liabilities for some charitable institutions.

Many educational, religious, and charitable organizations, including some legal services programs, were unaware of their exemption from social security taxes and paid FICA taxes on behalf of their employees without ever filing a waiver.

Upon learning that they were entitled to exemption from social security tax, some of these organizations consulted a local office of the Internal Revenue Service and were told that because they had never signed a waiver of exemption, they could stop making FICA payments without further liability. Many charitable institutions then discussed the situation with their employees, who decided to cease participation in the social security system and to adopt a private pension plan.

Of these organizations, those that had received a refund of their social security payments prior to September 9, 1976, were given a choice by Public Law 94-563 whether to return to the social security system or to remain outside it. We believe the law was correct in providing this choice.

An inequity was created, however, with respect to other organizations, whose situations and circumstances were otherwise identical, except that they had not received a refund prior to September 9, 1976.

These organizations were given no choice of whether to resume social security participation. Their prior payments, made without knowledge of the exemption, were deemed to constitute a waiver of it, and they are now liable retroactively for both the employer's and the employees' share of all FICA taxes owed since they stopped making payments.

These organizations are now retroactively liable for all taxes owed since they ceased participation in social security. Full payment is required by July 30, 1977. In some cases, the amounts owed equal as much as 15 percent of the organization's annual budget. Moreover, the organizations cannot recoup the payments previously made into private pension plans.

The retroactive FICA tax liability has placed a serious financial burden on religious, charitable, and educational organizations, as well as upon legal services programs. The large amounts of social security taxes that they are now required to pay must be diverted from the charitable purposes of the organizations. Yet, these organizations acted in good faith reliance on advice received from the IRS, and adopted alternative benefit plans with the full concurrence of their employees.

We believe that the distinction made by Public Law 94-563 between organizations that received a refund for FICA taxes previously paid, and those that simply stopped making payments is an inequitable one, and we urge the Congress to enact a remedial amendment of the Internal Revenue Code, giving organizations that ceased making FICA payments without giving a refund the same treatment that Public Law 94-563 accorded to those that had received a refund. Such an amendment should:

Provide an adequate period of time for an affected organization to file a waiver certificate listing those employees, if any, who desire retroactive coverage;

Permit the organization to deduct the employee's share of retroactive taxes from wages of the employee who elects to return to social security;

Permit installment payment of retroactive liability over an appropriate period of time;

Permit the current employees of an organization to remain outside of social security, without any retroactive liability, if the organization has adopted a private annuity or pension plan; and

Provide reimbursement to organizations that, pursuant to IRS instructions, refunded to their employees amounts previously deducted and paid into FICA.

An additional problem is presented by a provision of Public Law 94-563 that affected organizations that received a refund prior to September 9, 1976, as well as those that did not. The law did not extend to future employees of affected organizations the choice given current employees; for them, participation in the social security system is mandatory.

This requirement will, over time, destroy the economic viability of private annuity or pension plans in which current employees are not enrolled. To protect their current employees, their organizations would like to have the exemption from social security participations extended to their future employees.

We appreciate and share the subcommittee's interest in insuring the integrity of the social security system, and protecting employees' retirement benefits. We believe, however, that these purposes can be accomplished without unfairly overburdening charitable organizations that acted in good faith reliance on advice received from IRS, and with the full concurrence of their employees. Many of these organizations simply cannot afford to pay the retroactive tax imposed by Public Law 94-563. We hope the Congress will provide them with prompt and adequate relief.

The problems I have been describing were brought to the attention of Representative Cotter. We are grateful for the attention he has given them and for his cosponsorship of H.R. 8490 which was introduced last week. If adopted, that bill would exempt legal services programs and other charitable organizations from the retroactive liability that was imposed upon them by 94-563. It would also give additional time for making installment payments to those programs that had received a refund and now have retroactive liability.

We hope that the committee will consider further amendments of H.R. 8490 in order to permit organizations whose employees are now enrolled in private pension plans to continue their participation in those private plans. In any event, we are grateful for the relief that would be afforded by H.R. 8490. It would make a considerable contribution toward saving our resources and preventing our programs from having to make retroactive payments.

Thank you.

[The prepared statement follows:]

STATEMENT OF ALICE DANIEL, GENERAL COUNSEL, LEGAL SERVICES CORPORATION

Mr. Chairman and members of the subcommittee: I am pleased to accept your invitation to testify on behalf of the Legal Services Corporation concerning provisions of the Social Security Act affecting nonprofit, tax-exempt organizations.

The Legal Services Corporation is a private, nonprofit corporation created by Congress in 1974 to support legal assistance in civil matters for those unable to afford an attorney. The Corporation is supported by an annual appropriation from the Congress.

In the Legal Services Corporation Act, the Congress declared that, "providing legal assistance to those who face economic barriers to adequate legal counsel will serve best the ends of justice . . ." To help achieve that goal, the Corporation now makes grants to 314 independent legal services programs located in each of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands (Micronesia).

The legal services programs receiving financial assistance from the Corporation are nonprofit corporations exempt from income tax under 501(c)(3) of the Internal Revenue Code. Nonprofit organizations are also exempt from the Social Security Act under Sections 3121(b)(8), 3101(a), and 3111(a), although the Act permits such organizations to waive their exemption from social security tax by filing a waiver certificate.

A problem in the Social Security Act became evident last year when the Internal Revenue Service took the position that employees of nonprofit organizations that had made payments without filing a formal waiver were not validly enrolled in the Social Security system, and not entitled to benefits.

Congress addressed this problem by enacting Public Law 94-563, that amended Section 3121(k) of the Internal Revenue Code. It insured coverage for the employees by providing that, in cases where a nonprofit organization continued to collect and pay Social Security taxes, a waiver of exemption would be deemed to have been filed.

While this legislation was necessary in order to validate the Social Security credits of affected employees, we believe it may have been enacted without full recognition of its impact with respect to the creation of retroactive tax liabilities for some charitable institutions.

Many educational, religious, and charitable organizations, including some legal services programs, were unaware of their exemption from social security taxes, and paid FICA taxes on behalf of their employees without ever filing a waiver. Upon learning that they were entitled to exemption from social security tax, some of these organizations consulted a local office of the Internal Revenue Service and were told that because they had never signed a waiver of exemption, they could stop making FICA payments without further liability. Many charitable institutions then discussed the situation with their employees, who decided to cease participation in the Social Security system and to adopt a private pension plan.

Of these organizations, those that had received a refund of their Social Security payments prior to September 9, 1976, were given a choice by Public Law 94-563 whether to return to the Social Security system or to remain outside it. We believe the law was correct in providing this choice.

An inequity was created, however, with respect to other organizations, whose situations and circumstances were otherwise identical, except that they had not received a refund prior to September 9, 1976. These organizations were given no choice of whether to resume Social Security participation. Their prior payments, made without knowledge of the exemption, were deemed to constitute a waiver of it, and they are now liable retroactively for both the employer's and the employees' share of all FICA taxes owed since they stopped making payments.

Approximately 15 recipients of financial assistance from the Legal Services Corporation, as well as many other charitable institutions, have been adversely affected by passage of Public Law 94-563. The affected legal services programs are located in several states, including Connecticut, Illinois, Indiana, Michigan, New York and North Carolina. After having made FICA payments they learned that they were entitled to exemptions, and then sought to exercise them by ceasing to pay FICA taxes, but did not receive a refund of taxes previously paid. The prevailing advice from IRS at that time indicated that no further FICA liability would follow.

Each of the grantees ceased making payments with the concurrence of its employees, and with their agreement, decided to divert funds previously paid to Social Security to a qualified tax-sheltered annuity or pension plan.

Several of them applied for refunds prior to September 9, 1976, but were denied them because Public Law 94-563 treats organizations that did not actually receive a refund by that date in the same manner as organizations that never applied for a refund at all. A few of the organizations were advised by IRS that to qualify for a refund they must first return to their employees the contributions that had been withheld and paid into FICA. The organizations made the refunds to their employees, and were subsequently denied their own refunds by IRS.

These organizations are now retroactively liable for all taxes owed since they ceased participation in Social Security. Full payment is required by July 30, 1977. In some cases, the amounts owed equal as much as 15 percent of the organization's annual budget. Moreover, the organizations cannot recoup the payments previously made into private pension plans.

The retroactive FICA tax liability has placed a serious financial burden on religious, charitable, and educational organizations, as well as upon legal services programs. The large amounts of social security taxes that they are now required to pay must be diverted from the charitable purposes of the organizations. Yet these organizations acted in good faith reliance on advice received from the IRS, and adopted alternative benefit plans with the full concurrence of their employees.

We believe that the distinction made by Public Law 94-563 between organizations that received a refund for FICA taxes previously paid, and those that simply stopped making payments is an inequitable one, and we urge the Congress to enact a remedial amendment of the Internal Revenue Code, giving organizations that ceased making FICA payments without receiving a refund the same treatment that Public Law 94-563 accorded to those that had received a refund. Such an amendment should :

Provide an adequate period of time for an affected organization to file a waiver certificate listing those employees, if any, who desire retroactive coverage;

Permit the organization to deduct the employee's share of retroactive taxes from wages of the employee who elects to return to Social Security;

Permit installment payment of retroactive liability over an appropriate period of time;

Permit the current employees of an organization to remain outside of Social Security, without any retroactive liability, if the organization has adopted a private annuity or pension plan; and

Provide reimbursement to organizations that, pursuant to IRS instructions, refunded to their employees amounts previously deducted and paid into FICA.

An additional problem is presented by a provision of Public Law 94-563 that affected organizations that received a refund prior to September 9, 1976, as well as those that did not. The law did not extend to future employees of affected organizations the choice given current employees; for them, participation in the Social Security system is mandatory. This requirement will, over time, destroy the economic viability of private annuity or pension plans in which current employees are now enrolled. To protect their current employees, these organizations would like to have the exemption from Social Security participations extended to their future employees.

We appreciate and share the Subcommittee's interest in insuring the integrity of the Social Security system, and protecting employees' retirement benefits. We believe, however, that these purposes can be accomplished without unfairly overburdening charitable organizations that acted in good faith reliance on advice received from IRS, and with the full concurrence of their employees. Many of these organizations simply cannot afford to pay the retroactive tax imposed by Public Law 94-563. We hope the Congress will provide them with prompt and adequate relief.

Mr. COTTER. Thank you very much.

I am very familiar with this problem. Mr. Hollander, who is counsel of the Legal Service Corp. in my home town, has spoken to me about it, as a matter of fact only yesterday morning. I got a letter outlining the whole problem from him. I am certain that it was not the intent of Congress to create this inequity. I think the bill filed by Mr. Ottinger will be worked on very soon and this way we can correct this situation and I am optimistic that it will be done. I do appreciate your coming here.

Thank you very much.

Ms. DANIEL. I think Mr. Orenstein would like to say a few words about how the bill has affected his program.

STATEMENT OF HOWARD ORENSTEIN

Mr. ORENSTEIN. I think perhaps what I would do, Attorney Daniel has covered very well what I was going to say. I do have a prepared statement I did not have a chance to prefile and I would like to submit it. I would like to urge on the committee here suggestions for possible expansion of H.R. 8490 because I think the result of the bill will be to eliminate retroactive liability but for our corporation, it would mean that some of our employees would not be affected as I think perhaps the bill might have been intended. I would like to make some suggestions in the form of a statement with the committee and perhaps confer with the committee staff at a later time.

Mr. COTTER. Without objection, that will be admitted.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF HOWARD ORENSTEIN

My name is Howard Orenstein. I am Executive Director of Neighborhood Legal Services, Inc., 524 Albany Avenue, Hartford, Connecticut. Our office is funded in part by the Legal Services Corporation which in turn is funded by the Congress to provide attorneys for persons who otherwise would be unable to afford legal counsel. We function as a non-profit Connecticut corporation. Accompanying me today is Attorney James Bransfield of our staff.

My testimony relates to proposed amendments to Public Law 94-563. As the Committee knows, under the law a nonprofit corporation is exempt from Social Security taxes unless it files a waiver of its exemption. Since many nonprofits had paid into the Social Security system without having signed such a waiver, Congress passed Public Law 94-563 in the last session to validate such prior payments and confirm the coverage of these nonprofit corporations by treating their prior payments as a constructive waiver of their exemption. To the extent that Public Law 94-563 thus supported the intent of these corporations, the bill was most desirable. However, some nonprofits had paid into the system on a voluntary basis for a time and then, in reliance upon their exemption, discontinued payments. As Public Law 94-563 reads, such corporations may also be swept into the system, although the true intent of Public Law 94-563 was simply to allow those nonprofits and their employees who wanted to be in the System to participate.

Our office, Neighborhood Legal Services, has never filed a waiver of its exemption from Social Security taxes. Therefore, it was exempt from such taxes by virtue of its nonprofit status prior to the passage of Public Law 94-563. It had, however, made some voluntary payments on behalf of its employees into the Social Security system for a time. In 1975, our office was urged by the Community Services Administration, the federal agency which then provided our federal funding, to discontinue payments into the Social Security system and instead to begin to pay equivalent amounts into a tax sheltered annuity for the benefit of our employees. Our office conferred with the Internal Revenue Service at the time that it had never filed a waiver of its exemption. It inquired of the Social Security Administration whether it should claim a refund on prior payments into the Social Security system, and was told that prior payments were creditable, that there was no reason to file for a refund, and that we could simply discontinue voluntary payments into the system and divert these amounts into an I.R.S. qualified tax-sheltered annuity. Our office consulted with all its staff and received a 100 percent vote to divert the payments. We have since that time paid the sums which would otherwise have gone into Social Security into an immediately vesting tax sheltered investment fund for employees.

As noted earlier, we believe that the original intent of Public Law 94-563, was sound. Apparently the Social Security office in Representative Ottinger's district had expressed the view that such payments by nonprofit corporations into the Social Security system without their having filed a waiver of exemption were not creditable and that such corporations should seek a refund of such payments. According to the legislative history, Public Law 94-563 was written to assure that such payments would be credited to employees' accounts. However, the bill used the device of treating prior voluntary payments into the system as a constructive waiver of exemption. It was appropriate to treat payments into the system as a constructive waiver of their exemption as to those nonprofits which continued to pay into the system and intended to stay in the system. However, the sweeping language of Public Law 94-563 could be construed to draw back into the system corporations like ours which had long since opted to remain out of the system. Public Law 94-563 arguably allowed such nonprofits to remain out of the system only for current employees and only if the corporation had, prior to September 9, 1976, received a refund or credit for prior payments. Thus, as currently phrased, the language of Public Law 94-563 could be construed to result in imposing a tax on our office retroactively which we never owed prior to Public Law 94-563 and to constructively draw us back into a system we had long since opted out of. Had the law stated in 1975 that only those receiving a refund or credit after discontinuing payments could continue to remain out of the Social Security system for current employees, we would have received a refund in late 1975. As I have noted, we had been advised not to do this by the Social Security Administration, and that advice, in retrospect, has foreclosed this option to us.

Thus, Public Law 94-563 attributes a legal significance to the act of obtaining a refund which it never had prior to the bill's effective date and that date was

after the bill's deadline for obtaining a refund. The result could be a retroactively imposed tax liability for our office of around \$50,000 by our last calculation. Parenthetically, that would be \$50,000 less of Congress' money going to provide legal services to the poor, and, in a sense, a frustration of the Congressional purpose in providing these funds to us and a transfer from one of the government's funds to another. These are results never intended, nor, I am sure, even remotely envisioned by the bill's drafters. The bill's drafters have not eliminated the general exemption for such taxes for nonprofits. Those nonprofits which never paid into the system for the benefit of their employees still remain out, including the many new nonprofits which will hereafter be created. The bill deals only with those nonprofits which paid in and then stopped and either did or did not obtain a refund. It thus fails to give fair and equitable consideration to offices like ours which never really has stopped providing for its' employees' retirement benefits and which now finds itself potentially penalized for doing what was legal, fair and just for its employees.

We have previously submitted to the Committee, through its staff, drafts of amendments which we believe would cure the resulting unfairness. We appreciate the Committee's efforts to address the problem and agree that the Committee's proposed bill, excusing the retroactive tax liability imposed by Public Law 94-563 for some nonprofits, allowing others to pay any remaining liability over the course of time, and validating all prior payments into the system is a good beginning. However, we do not feel that the proposed bill goes far enough in that it does not appear to allow our employees to remain out of the system. We suggest that optimally the bill should allow an office like ours to stay out of the system for current and future employees. At the very least, our current employees should have such an option, the same option granted by Public Law 94-563 to employees of nonprofits which received a refund or credit prior to September 9, 1976. We cannot see any fair basis for treating our situation less favorably than that of nonprofits which received a refund or credit. In fact, equity would seem to suggest that an office which has provided a tax sheltered retirement plan for its employees deserves greater consideration than an office which stopped paying into the system, got a refund, and presumably thereafter made no provision for its employees.

We therefore urge the Committee to consider this matter on the equities. We should state that we believe that Public Law 94-563 may be inapplicable and is unconstitutional as applied to offices like ours and I understand that at least one lawsuit has been commenced to overturn Public Law 94-563 on Constitutional grounds. However, we are at this time placing our confidence in the Congress to correct the unintended results of Public Law 94-563. As I have stated, we have submitted language to the Committee's staff which would allow corporations like ours (1) to stay out of the system and continue our private plan or (2) at the least, to opt out for current employees as the law allows nonprofits which got a refund or credit to do. We are hopeful that the legitimate expectations of our employees and their contract rights in our tax sheltered annuity can be preserved. We believe that the preservation of such alternative retirement rights is entirely consistent with Representative Ottinger's original purpose in proposing Public Law 94-563, which was simply to validate prior payments into the system and keep in those nonprofits which wanted to stay in the system but hadn't filed the waiver, and that such a change in the law as we propose would correct the unintended results of the language of the law as it presently stands.

Mr. COTTER. There being no further witnesses, the committee will adjourn until 10 o'clock tomorrow in room 2226.

Thank you very much.

[Whereupon, at 12:20 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, July 27, 1977.]

PRESIDENT CARTER'S SOCIAL SECURITY PROPOSALS

WEDNESDAY, JULY 27, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SOCIAL SECURITY,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2226, Rayburn House Office Building, Hon. Joe Waggonner, Jr., presiding.

Mr. WAGGONNER. The committee will come to order.

Mr. Risenhoover, would you come now, please?

STATEMENT OF HON. TED RISENHOOVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. RISENHOOVER. I would like to enter my statement in the record.

Mr. WAGGONNER. It will be entered in its entirety.

Mr. RISENHOOVER. I am sure we will have a quorum call or a vote here in a second.

I would like to mention a couple of paragraphs, particularly. Since becoming a Member of the House of Representatives, I have introduced many bills to serve many purposes. One of the most important bills I have introduced, one similar to a bill introduced by yourself and one which we are concerned with today is H.R. 6434.

I want to make very clear I do not support improved disability insurance for the blind as a benevolent gift or a form of Government charity to blind people. I argue for it because I believe it is sound fiscal policy, sound financial policy and because it is the right thing to do.

The blind of this country refuse to accept help unless necessary as the normal consequence of blindness. But they do insist and demand the right to work and earn a living.

The blind can realize this hope if we as representatives of the people do our best to pass legislation that will not only benefit the blind but society as a whole.

Mr. Chairman, thank you, very much.

[The prepared statement follows:]

STATEMENT OF HON. TED RISENHOOVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. Chairman, it is with great pleasure that I appear before this distinguished subcommittee to explore the possibilities for improvements in the Social Security Disability Insurance program, and particularly those provisions which govern the conditions of eligibility for blind persons.

Since becoming a Member of the House of Representatives, I've introduced many bills to serve many purposes. One of the most important bills I've introduced, one similar to a bill introduced by yourself, Mr. Chairman, and one which we are concerned with today, is H.R. 6434.

H.R. 6434 would make it possible for blind people who have worked a year and a half under social security-covered employment to qualify for and draw disability benefits so long as they remained blind and regardless of their earnings.

Economic disadvantages of blindness are too often substantial and overwhelming. Employment opportunities available to the blind are usually limited in number and short in duration. The blind are rarely able to exercise their full talents and capabilities in the labor force, but adoption of an improved disability insurance program can help remedy this condition.

Under the present law, blind persons who are receiving social security disability insurance benefits are confronted with the reality that they may lose financially through their efforts at employment. Essentially, this means that the only true feeling of long-range economic security belongs to those beneficiaries who remain idle rather than productive. This is clearly not as it should be. H.R. 6434 would correct this inequity by guaranteeing disability insurance benefits to the blind who have worked at least six quarters.

I do not support improved disability insurance for the blind as a benevolence, kindness or a form of Government charity to blind people. I argue for it because I believe it is sound financial policy and because it is the right thing to do. The blind of this country refuse to accept helplessness as the normal consequence of blindness, but insist and demand the right to work and earn a living. The blind can realize this hope if we, as representatives of the people, do our best to pass legislation that will not only benefit the blind, but society as a whole.

Mr. WAGGONER. Thank you, Mr. Risenhoover.

I don't know of a better place to place your emphasis than on the blind because all they want is an opportunity to work and they do it under great stress and strain.

Thank you for your appearance here this morning.

Mr. RISENHOOVER. If I have served anything of good consequences since I have been in the House of Representatives, it is largely due to two blind people, Clyde and Kelly Stenson from my home community who held the first community get-together for me when I decided to run for Congress.

I certainly owe them a debt of gratitude and I know them not to be dependent, benevolence-seeking people. They are hard-working people who make their own way in the world and I think other blind people ought to have the opportunity to benefit as they have and I am sure they feel the same way.

Mr. WAGGONER. Thank you, Mr. Risenhoover.

Colonel Berkeley, would you come now.

STATEMENT OF COL. RANDOLPH C. BERKELEY, JR., LEGISLATIVE COUNSEL, NATIONAL ASSOCIATION FOR UNIFORMED SERVICES

Colonel BERKELEY. Mr. Chairman, ladies and gentlemen, I am Randolph Berkeley, a legislative counsel for the National Association for Uniformed Services. We are an association, not a union, but we serve our membership in many of the same "people" areas that would be covered by a military union.

The distinction is that our association is dedicated to military effectiveness for the United States, as well as fair play for our servicemen and women. We trust the Congress to provide both.

We will never encourage or condone a strike, work stoppage, or any other action contrary to the national interest and our military tradition of loyalty to the United States. We represent all ranks, all services; active and retired, plus their survivors.

We thank the chairman, members of the subcommittee and this panel for the opportunity to appear before you and discuss a grievous problem which the social security law has created. In short, a group of retirees is being punished because they were forced to contribute to social security while in military service. This inequity urgently needs correction by the Congress. We will recommend seven options for the Congress to consider.

Your attention is invited to Public Law 84-881, which placed the uniformed services under social security. The intent of the Congress was to provide social security for citizens during their time in service. Over the 21 years since the passage of this law, a serious inequity and hardship has developed for a small group of veterans who later work for the Federal Government. At age 62, they lose all civil service annuity credit for their years of military service after 1956.

The effect on some retirees is a drop in retirement income at age 62 of over \$500 a month merely because they were required by law to contribute to social security. This loss occurs upon eligibility for the social security reduced benefit at age 62.

These veterans are not afforded the option of delaying social security until age 65, like other citizens, in order to receive the maximum benefit. The reduction in their civil service annuity is required by law whether they apply for social security payments or not, but note—if they had not contributed to social security, they would incur no loss of retirement income at age 62. Congress has in this law inadvertently legislated a permanent financial penalty against some of our veterans. We call this "Catch 62."

Bills to remedy this problem, in whole or in part, have been introduced in the last three Congresses, but to date no hearings have been held.

Passage of corrective legislation in this regard will not only help the individuals concerned, but in the case of those still in civil service, it may be the key factor in an earlier retirement decision. Letters indicate that some are holding on to their civil service jobs as long as possible because of the penalty of "Catch 62" when they retire.

Civil servants who are military reservists are permitted to utilize their active and drill military service time for military retirement at age 60 and the same time for civil service retirement.

This is in sharp contrast to "Catch 62" where the veteran serving with civil service cannot utilize any military time after 1956 for credit toward his civil service annuity as was permitted by law from 1920 through 1956.

Documents attached explain this matter in detail. The National Association for Uniformed Services has studied this problem and recommends the following actions for your consideration:

Please see the options list attached to the enclosed discussion of "Catch 62."

I will not take the time to read these options, but would like to comment briefly on some. Any of the seven actions would improve the present situation which has seen no relief for 21 years.

The most desirable action for all veterans concerned is the first option. The National Association for Uniformed Services strongly endorses it. We also urge your serious attention to the third option.

It deals with legislation passed by the Congress last year which solved the "Catch 62" problem for a limited number of Foreign Service officers. With minor modifications, it could do the same for all other veterans who have had Federal Civil Service up to January 1, 1977.

We also strongly support the bills which have been introduced by Senator Thurmond, Republican, of South Carolina, (S-245) and Representative Bennett, Democrat Third District of Florida (H.R. 767), and urge that you push for hearings on these bills this year.

Options (6) and (7) may have the greatest appeal to those primarily interested in saving money for the social security fund. While option (1) is the most equitable to the individuals who have lost money because of this law, even the seventh option would be a significant improvement over the present situation.

In summation, I would like to leave one thought with you. This aspect of social security, combined with civil service employment, rewards those without military service and penalizes those who served their country in uniform. I urge that you act to correct this injustice in this session of Congress.

Thank you for the kind attention to this important personnel matter. I will be happy to respond to any questions from the subcommittee now or at any other time.

[An attachment to the statement follows:]

CATCH-22

(A discussion of a severe inequity for veterans who retire from the Civil Service and a plea for corrective action in 1977 through S. 245 and H.R. 767)

PREFACE—THE MEANINGS OF "CATCH-22" AND "CATCH-62"

In 1965, Joseph Heller published a story about Army pilots in World War II. The book was called "Catch-22." In 1956, the Congress created "Catch-62" through the law which required those in the military services to contribute to Social Security.

"Catch-22"

Anyone who wants to get out of combat duty isn't really crazy. If a pilot who is considered to be crazy asks to be relieved of flying in combat, it is obvious that he is sane, as a concern for one's own safety in the face of danger demonstrates a rational mind.

"Catch-62"

While less than 10 percent of those who start a career in the armed forces can expect to reach age 62 with retirement benefits, the Congress in 1956 added another complication for those veterans who later serve the Federal government as civilians. Section 8332(j) of Title 5 excludes military service after 1956 in determining the aggregate period of service on which his annuity is payable after age 62. The veteran finds that the contributions he was forced to make to Social Security result in a serious loss of income to him from age 62 on. His loss of annuity income far exceeds his small check from Social Security in most instances. If he had not been forced to contribute to Social Security, his net retirement income would not be affected. If this confuses the reader, consider the veteran trapped by this "sure-loss" penalty for age. "Catch-62" is reserved only for those 62 years of age who have served their country both in the armed services and the Federal government.

"CATCH 62"—AN UNFAIR LAW

A discussion of a serious inequity which has resulted from portions of Section 8332(j) of Title 5, U.S. Code (Public Law 84-881). This law, passed in 1956, required members of the uniformed services to contribute to Social Security from 1 January 1957 and barred use of such service after 1956 in computing their civil service retirement annuity beyond age 62.

"CATCH 62"—A UNIQUE PROBLEM

When a citizen reaches sixty-two years of age, he anticipates a small check from Social Security to help maintain minimum income security in his declining years. Through an anomaly of law, one small group is forced to take a large reduction in their already earned annuities because at sixty-two they are considered to be eligible for the Reduced Benefit of Social Security, whether they elect to receive it or not. They are not accorded the option open to other Americans of being permitted to delay receiving Social Security until age sixty-five in order to receive maximum benefit. These unfortunate individuals experience a severe loss of retirement income because they were required to contribute to Social Security. Survivor annuitants will also be penalized by a similar reduction in their annuities.

This relatively small group, so adversely affected, are those who are serving or have served in our military services since 1956, later work for the Federal Government and then combine all Federal service for a single annuity.

FAILURE TO PUBLICIZE

It is obviously unfair to deprive anyone of his earned retirement income, but the administration of the law that requires this retirement deduction also has not been properly publicized to prospective retirees. The individual services have not included a briefing on this pitfall in separation processing. Upon entering the civil service, there has been no policy to brief newcomers regarding this "Catch 62." (This problem was brought to the attention of the Secretary of Defense and the Civil Service Commission in June, 1977 by the National Association for Uniformed Services.) Some even manage to retire from the civil service without being aware of this problem. The Civil Service Commission reports that "dozens and dozens of retirees come to their offices wondering what happened to cause a sudden dip in their retirement annuities *at age 62*." The files of the National Association for Uniformed Services contain many queries about this punitive inequity of the law. While publication of the problem will not correct it, it will at least alert those now in service to this hazard of employment by the Federal Government.

THOSE AFFECTED

A total of over 141,000 retired veterans are presently employed by the Federal Government. About 80% are retired enlisted personnel. In addition, there is the larger and still growing group of veterans employed by the Federal Government who had military service after 1956 but did not qualify for military retirement. All of them also could be adversely affected by "Catch 62." Some will take separate retirement checks from the military (if a military retiree) and the civil service, and then pick up their Social Security payments at age 62 or 65 as they desire. Some will find it more advantageous initially to combine all of their Federal time for a single annuity, but may decide against this because of the obvious inequity of "Catch 62." Others will find themselves forced to select the combined route in order to obtain significant survivor benefits or to receive any civil service retirement if under sixty and without minimum civil service time. Under the law, once selection is made, it is irrevocable (with one exception) if military service is used to establish eligibility for civil service retirement. The exception to this irrevocability provision is the involuntary civil service retiree (RIF or termination of position). If he is reemployed in a civil service position, he can have his military retirement pay restored and choose a different alternative for his final civil service retirement.

UNFAIR ASPECTS OF THE LAW

Each retirement decision is highly individual and depends upon length of service and salary on civil service retirement, but the option of combining all

time for a single annuity should not be precluded for these veterans by the following disadvantageous provisions of the law:

(1) Mandatory reduction of civil service annuity at age 62 (with its resultant severe loss of income) when eligible for the Reduced Benefit of Social Security whether applied for or not.

(2) Exclusion of the logical option of delaying receipt of Social Security until age 65 in order to obtain the maximum benefit for which he contributed.

(3) The adverse effect on an employed retiree at age 62 of being unable to even obtain the Reduced Social Security Benefit to offset his enforced loss of annuity.

ARGUMENTS AND PROPOSALS

From 1920 to 1957 all military service was creditable for civil service retirement. A government argument for cancelling annuity credit for any years of military service after 1956 is that the government would bear the cost of civil service retirement credit for the same years it contributed to Social Security. The argument ignores the fact that the government has already funded for military retirement for the same period and the individual also has contributed through his imputed 7 percent contribution in military pay calculations. The individual also contributed to Social Security (as he had no choice in the matter), but this contribution returns to plague him at age 62 with a decrease in income for the rest of his life.

Another approach would be to allow the individual civil service annuitant to waive all his Social Security rights in order to retain his full annuity. This would incur the greatest costs for the civil service retirement system and allow the Social Security system to retail all payments to these individuals' accounts with no payments ever made from them.

A compromise approach, now advocated by the Department of Defense and proposed to Congress (H.R. 767 and S. 265), would allocate the costs more equitably, require earned payments to be made by the Social Security System, and produce a matching savings by the civil service retirement fund. The individual would suffer no loss of income at retirement and would receive his Social Security check, but his civil service annuity would be decreased by the amount of the Social Security received. In effect, he would be paying again for his own Social Security check to which he has already contributed, but he would suffer no net loss of retirement income at age 62.

The inequity of the present situation is obvious and disturbing. The obligatory acceptance of the Reduced Benefit of Social Security benefit by these former military personnel at age 62 is unfair, and much more unjust is the concurrent recomputation of the Civil Service annuity resulting in a drastic reduction in retirement income.

It is ironic that elderly veterans should have their retirement incomes arbitrarily reduced because they were forced to contribute to Social Security, which was designed to help maintain their income security on retirement.

A TYPICAL "CATCH 62"

Here is an example of how the law works in a specific case:

1. Present combined Federal service (civil service plus military service), including military service after 1956 (8 years), (years)-----	29.5
2. Current retirement entitlements-----	\$10,710
3. Creditable combined Federal service at age 62 (minus credit for military service after 1956), (years)-----	21.5
4. Recomputed retirement entitlement at age 62-----	\$7,687
5. Difference at age 62: Loss of 28 percent (\$3,023)	
6. Social security entitlement at age 62 ¹ -----	\$1,200
7. Total retirement at age 62:	
Combined Federal service-----	\$7,687
Social security-----	1,200
Total-----	\$8,887
8. Net Loss (\$10,710—\$8,887=\$1,823): 17 percent (may be higher or lower). ²	

¹ Close to minimum entitlement because of 10 years of "0" earnings.

² Amounts will vary. The longer the period of military service after 1956 the greater the loss. 1 retiree is presently suffering a net loss of \$554 a month.

GROWTH OF THE PROBLEM

Such a relatively few people were affected, and to such a small degree, in the early years after 1956 that their complaints went unheeded. As time passed and larger numbers of former military personnel have gone to work for the Federal Government, not only have more people become subject to "Catch 62" but the sums they have been forced to contribute to the government from their retirement incomes are larger and the resulting losses more critical because of continuing inflation. Today, retired master sergeants and chiefs completed careers in civil service can experience net retirement income losses of upward of three hundred dollars a month. Some retired officers are losing over five hundred dollars a month. Each year that passes, the sums that new civil service retirees will have to sacrifice will increase because of additional years of military service since 1956 combined with the higher pay scales of today and tomorrow.

THE LAW VERSUS THE INTENT OF CONGRESS

Attempts to grapple with this unique problem by the relatively small group of retirees affected have been most difficult because their voice is small and their plight is essentially a problem of law. Three agencies of the government, the Department of Defense, the Civil Service Commission, and the Social Security Administration are all involved in carrying out this law, and none of them have been keenly interested in a situation that affects a small group which has served both the military services and the civilian agencies of our government. The real irony in this situation is that the Congress never intended to penalize any citizen when it required that military personnel contribute to Social Security. The intent of the Congress was to assist citizens who had to serve in the armed forces by providing them with Social Security coverage for those years that they were not employed in our civilian society. There was no intent to deprive these citizens of credit for their years of military service in exchange for the Social Security credits.

Yet the effect of the law has been to deprive a retiree of several years of credit for retirement pay based on "high 3" average earnings in civil service and substitute therefor Social Security benefits based on relatively low earning years.

DEPARTMENT OF DEFENSE SUPPORT

The Department of Defense supports the bills to correct this inequity experienced by their former employees. The fact that their monies were earned by sweat (and, sometimes, blood) should be recognized and full retirement credit restored for their years of military service to our country.

SUPREME COURT ONINION IN A SIMILAR MATTER

The Supreme Court ruled in June 1977 that company pension plans must credit the time spent in military service by employees on leave from their jobs. Justice Thurgood Marshall wrote for a unanimous Court that pension payments "are predominantly rewards for continuous employment with the employer."

The Court held that "protecting veterans from the loss of such rewards when the break in their employment resulted from their response to the country's military needs is the purpose" of the Military Selective Service Act of 1970.

The ruling is of interest in considering the inequity of "Catch 62." The Government remains the employer of both military and civil service personnel, yet in 1956 Public Law 84-881 amended the Civil Service Retirement Law (5 USC 8332(j)) to insert a bar against crediting any military service from and after January 1, 1957, if the employee or his survivor is, or upon application would be, entitled to monthly old age survivor benefits (not disability benefits) under Section 202 of the Social Security Act (42 USC 402). This credit bar operates from the commencing date of annuity if Social Security eligibility exists at the time. If Social Security eligibility, arises after the annuity has commenced, the annuity is recomputed to exclude credit for the post-1956 military service from the point of Social Security eligibility.

The result of this 1956 amendment is to bar some veterans employed by the civil service from any retirement credit for a number of years of government service. This is totally at variance with the principles of the Supreme Court decision, which required private companies to give credit in their pension plans for time not actually served with them.

ONE POSITIVE, BUT LIMITED, ACCOMPLISHMENT

Alone among government agencies, the Department of State has taken steps to assist some of its former military personnel to avoid the penalties of "Catch 62." Until January 1, 1977, all former military who retired as regular Foreign Service Officers were completely exempted from the recomputation required by law of all other former military personnel. In Public Law 94-350 (passed in 1976) former military who retire as Foreign Service Officers (regular or reserve) are now required to have their annuities recomputed at age 62, but only for military service performed after January 1, 1977. Thus, former military in the Department of State, who previously received complete exemption from "Catch 62," are now provided twenty more years of military service credits than other former military, but oddly those Foreign Service Reserve Officers who retired before 1976 are excluded from this benefit. (This excludes many who served during the Vietnam War when a significant number of military retirees were recruited to fill key billets in the pacification effort for the Agency for International Development. Since most of them had been forced out of A.I.D. before the end of 1975, they missed this benefit.)

CONGRESSIONAL INTEREST 1973-1976

Members of Congress have become increasingly aware of this problem since corrective legislation was first introduced. Similar legislation introduced by Senator Strom Thurmond of South Carolina and Representative Bennett of Florida in 1975 had wide support from Members of Congress, but unfortunately died in committee.

CONGRESSIONAL INTEREST 1977

In January 1977 both Senator Thurmond and Representative Bennett reintroduced their bills in the 95th Congress. At the time Senator Thurmond stated:

"Section 8332 (J) of Title 5, United States Code, provides that a retiree's annuity must be recomputed when he becomes eligible for Social Security benefits. In this recomputation, his years of military service performed after December, 1956 are excluded from the computation of his civil service annuity. This results in a severely reduced annuity at age 62 when it is needed most, since the Social Security falls far short in most cases of offsetting the loss of the excluded military service credit.

My bill would allow a retiree's civil service annuity to be reduced only by the amount equal to that which he will receive from Social Security."

The solution in both bills is merely to offset the civil service retirement by the amount of Social Security entitlement. This would insure that no civil service retiree experiences a loss of income at age 62.

ACTION NEEDED NOW

The National Association for Uniformed Services urges vigorous support of S. 245 and H.R. 767 to bring this matter to the floor for a vote. Similar bills have died in committee since 1973, in spite of wide support in Congress and elsewhere. Only if concerned citizens interested in fair play will raise their voices in support of these bills will positive action be possible to eliminate this injustice to this relatively small group of veterans.

IN CONCLUSION

Seven options are attached which list actions Congress could take to restore these presently denied, previously earned, benefits completely or reduce the losses in varying degrees. While Option No. 1 is the most equitable for the veteran who has suffered these losses, any of the seven options would represent a welcome improvement over the present situation.

The following statement by the Vice President summarizes the feelings of the servicemen and servicewomen who are subject to "Catch 62":

"Older Americans should not have to live in the fear that their benefits may be reduced or cut off."—Vice President Walter Mondale (From his remarks about Social Security on May 9, 1977).

APPENDIX (1) TO "CATCH 62"

OPTIONS IN ORDER OF EQUITY TO VETERANS CONCERNED NOW AND IN THE FUTURE

(1) Repeal portions of Section 8332(j) of Public Law 84-881 that deny military service credit after 1956 and restore, retroactive to January 1, 1957, full civil service annuity credit for military service as was done from 1920 through 1956.

(2) If unable to correct the inequity as stated in (1), repeal portions of Section 8332(j) of Public Law 84-881 that deny military service credit after 1956, effective immediately, and recompute the retired incomes of all those affected now and in the future to give full credit for their military service since 1956.

(3) A third option would be to expand the provisions of Public Law 94-350 (passed in 1976) to include all former military personnel who have worked in civil service at any time, as is now done for those who subsequently serve as Foreign Service Officers (Regular or Reserve). Since the effective date of this law was January 1, 1977, it would need only minor modifications to eliminate the "Catch 62" problem for all present veterans who have ever worked for civil service through January 1, 1977. (This would place all present veterans on equal footing if the effective date of the law was made 1 January 1978. It would not fully protect some veterans who enter civil service after January 1, 1978.)

(4) Exempt all military and former military personnel until January 1, 2020 from the provisions of Public Law 84-881 which bars military service for civil service credit from age 62. (This would protect all present and former servicemen from losing any further earned retirement benefits, phase out this problem without injury to anyone, and set the stage for the President's Blue Ribbon Panel to look at the interrelationships among military pay, civil service pay and Social Security benefits.)

(5) Decrease civil service annuity benefits for veterans by the amount of Social Security earned to prevent any loss of income at age 62. (S. 245 and H.R. 767) NOTE: These bills require the veteran to absorb the cost of his Social Security check with his annuity check. (This would be a major improvement over the present situation, but would still not completely remove the penalties in Section 8332 (j).)

(6) Allow veteran retirees from civil service the option of waiving their military service incurred Social Security credits since 1956 in order to draw their full civil service annuity based upon all military and civil service time and require the Social Security Administration to refund to them and to the U.S. Treasury the amounts contributed by the individual and by his military service. (This would prevent a loss of civil service annuity income for the veteran and save money for the Social Security Fund.)

(7) Allow veteran retirees from civil service the option of waiving their military service incurred Social Security credits since 1956 in order to draw the full civil service annuity based upon all military and civil service time. (This would prevent a loss of civil service annuity income for the veteran and save money for the Social Security Fund.)

NOTE: In the last analysis one must reflect upon the fact that this small group of veterans has been penalized by having their old age civil service annuity checks reduced, and the only completely fair solution is Option (1). However, any of the other options would provide some welcome partial relief that is long overdue.

APPENDIX (2) TO "CATCH 62"

8332 Title 5, Government Organization and Employees, page 452.

Reproduced below is the wording of paragraph 8332(j) which created "Catch 62":

"Military service performed by an individual after December 1956 shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his widow or child is based, if the individual, widow, or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individuals wages and self-employment income. If the military service is not excluded by the preceding sentence,

but on becoming 62 years of age, the individual or widow becomes entitled, or would on proper application be entitled, to the described benefits, the Civil Service Commission shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service."

APPENDIX 3

FACT SHEET: "CATCH 62" LEGISLATIVE BACKGROUND

Year	Congress	Legislation	Comment
1956.....	84th.....	Public Law 84-881...	Required members of the armed services to contribute to social security after Dec. 31, 1956. Since the Government contributed to social security for its employees after Dec. 31, 1956, it will not permit military service during these years to be creditable for a civil service annuity after age 62, although it is permitted before age 62. This means that a severe cut in retirement funds occurs at age 62 for all veterans (except certain Department of State employees) retiring from civil service who combine all Federal time for a single annuity. Some veterans retiring from civil service could only obtain a significant survivors benefit by combining all Federal service and actually had no practical alternative to the combined route.
1973.....	93d.....	H.R. 1821.....	Representative Wilbur Mills (AR-2-D) introduced legislation that would eliminate this problem of a loss of retirement income at age 62.
1975.....	94th.....	S. 2564, H.R. 125.....	Senator Strom Thurmond (SC-R) and Representative Charles E. Bennett (FL-3-D) introduced similar bills.
1977.....	95th.....	S. 245, H.R. 767.....	Senator Strom Thurmond (SC-R) and Representative Charles E. Bennett (FL-3-D) introduced the present bills in the Congress. The solution proposed is to reduce the civil service annuities only by the amounts of social security benefits received. This deprives the veteran of the social security benefit he and the Government had paid for, but does prevent a severe loss of retirement income as at present.

APPENDIX (4)

FACT SHEET—"CATCH 62"—ADDITIONAL DATA

Those affected: All citizens who have served in the military since 1956 and then work for or plan to work for the Federal Government.

Intent of Congress: To provide all citizens with social security coverage while in military service.

Aberration: In providing social security coverage for the military, the law inadvertently resulted in a punitive loss of retirement income for military personnel who subsequently work for and retire from civil service.

Exceptions: Some Department of State employees are completely exempt from this problem under certain conditions, others are partially exempt, and some are not exempted at all.

Comparisons:

(1) Citizen retirees from industry: Before age 62—receive retired pay; after age 65—receive retired pay; and at age 62 or 65 elects to also receive social security benefit.

(2) Citizen retires from military service: Before age 62—receive retired pay; after age 65—receive retired pay; and at age 62 or 65 elects to also receive social security benefit.

(3) Citizen veteran retires from Civil Service: Before age 62—Receives retired civil service annuity; from age 62—Receives reduced benefit from social security because of age and reduced civil service annuity because of loss of military service credits after 1956. Age 65—No option. Public Law 84-881 requires age 62 reduced benefit.

Mr. WAGGONER. Thank you, Colonel.

Colonel, are you at this point in time familiar with what Admiral Rickover had to say yesterday before a Senate subcommittee with regard to Federal retirement? In the brief item which I saw, he linked together the civil service, the military, and social security in one retirement system in an effort to avoid double dipping.

Colonel BERKELEY. Yes, sir. I read part of Admiral Rickover's testimony. I note in his testimony he touches on this same problem which we call "Catch 62." There is a paragraph in there on this.

Mr. WAGGONER. What is your understanding of his recommendation? I took it to mean he was probably recommending even the abolition of social security.

Did you feel it went that far?

Colonel BERKELEY. I have not read the full testimony, so I would not comment on that. I see the morning paper indicated that.

Mr. WAGGONER. That was the indication I got from the paper at least.

You represent both the active duty and retired military personnel. What would their attitude be, in your opinion, if employees of civil service or the military would be required to work for a longer period of time than is now required?

In that particular instance, what would be the attitude of the people you represent about such a proposal?

Colonel BERKELEY. I imagine the attitudes would be mixed. Those people who have served in the military with a guarantee of retirement on 20 years or beyond feel that the money they have earned in retirement is earned money that they are entitled to.

They would resent very much being forced to lose that to work with the Federal Government. This is one of the problems, as I know you are aware, from the double service's double-dipper testimony. It is a very sticky issue.

My boss, Colonel Schiffey, will testify tomorrow at the dual compensation hearings on this very point. I commend your attention to his testimony, which, I think, is very comprehensive and very fair.

Mr. WAGGONER. Do you subscribe, in your association, to the idea that exists with some that continually reducing agewise the point in time at which you become eligible has been bottomed out, and because of what we are looking at in the way of age patterns and that sort of thing, that we are going to be moving before too long in the opposite direction?

Colonel BERKELEY. I would think we would have to change these age patterns. I feel, really, based on my own personal experience in the armed services, that we get rid of people too early when they are just at their most productive ages.

Mr. WAGGONER. Do you feel that it is possible to combine social security with civil service and military retirement?

Colonel BERKELEY. I see no reason why it could not be done, because it is now done with the military retirement. The average military retiree picks up his retired pay plus social security at age 62 or 65 as he desires. So does a man in industry.

I see no reason why, if social security is applied to civil service, the same thing would not apply.

Mr. WAGGONER. Colonel, would you object to our holding the record open for a day or so to allow you to thoroughly acquaint yourself with that which Admiral Rickover had to say yesterday and supplement your answer to my earlier question?

Colonel BERKELEY. I would be very happy to do that, Mr. Waggoner.

Mr. WAGGONER. That would be very important.
[The information follows:]

RESPONSES OF THE NATIONAL ASSOCIATION FOR UNIFORMED SERVICES TO QUESTIONS
OF CHAIRMAN WAGGONER

Mr. Waggoner's questions are summarized as follows:

Question 1. What is your understanding of Admiral Rickover's recommendation wherein he linked together what he termed an effort to avoid double dipping to provide one employee's retirement system which would involve the civil service, the military and social security retirement? I took it to mean he was probably recommending even the abolition of social security, if this was provided for. Did you feel it went that far?

NAUS Response. We can find no evidence in his testimony that he was recommending the abolition of social security. If anything, it might be interpreted that he was advocating adding social security for the civil service employees to bring them into a common system of benefits with the military.

A study of Admiral Rickover's testimony reveals that he did not mention social security except in reference to the "Catch 62" problem. His comments in this regard are reproduced below:

"Also, to be equitable, persons with military service should be able to fully transfer retirement credits in the military to other federal retirement programs. Today, military time is counted toward civil service retirement and used initially in calculating retired pay. However, because of a quirk in the law, all military time does not count in the calculation of civil service retired pay received after age 62. At that age, the civil service retiree loses all civil service retirement credit for the time he spent in the military after 1956, and gets instead a social security annuity for those years. During the time he is in the civil service he does not come under the social security program. Therefore, he is generally entitled only to minimum social security payments based on contributions he made while in the military, years earlier. The effect is that Federal employees with prior military service receive a much lower retired pay after age 62 than they receive from age 55 to 62. In fairness, this anomaly should be corrected.

"On the other hand civil servants who are members of the military reserve should not get double retirement credit for military service. Under present rules, a reservist's active duty time is credited toward civil service retirement. It also counts toward his eligibility for a military retired pay at age 60. Thus, his years of active duty are counted twice—once for civil service retirement and once for a military retirement. This loophole should be eliminated." (From pages 13 and 14 of Admiral Rickover's statement)

Specific recommendations: "Seventh, the 50-some government retirement plans should be consolidated into a single system which would include the military. Retirement credits among government retirement systems should be fully interchangeable. Civil servants should not get double retirement credit for time in the military, as presently is the case for military reservists. Conversely, any military time that is creditable toward civil service retirement should continue to count throughout retirement instead of being eliminated at age 62." (From his Specific Recommendations at the end of the statement, page 21.)

Question 2. You represent both the active duty and retired military personnel. What would their attitude be, first, in your opinion, if at retirement you are employed by civil service or the military would be for a longer period of time than is now required? In that particular instance, what would be the attitude of the people you represent about such a proposal?

NAUS Response. Employment by civil service has been a normal option for military retirees with skills needed by the federal government. No problems of employment are indicated in this area except for the present unfair "Catch 62" which can trap any veteran. It takes many years of training and experience to develop knowledgeable leaders and skilled technicians in many military specialties.

Additional years of military service as an option would be warmly welcomed by many who are forced to retire in the interest of service promotion policies. Considering the technical complexities of modern weapons systems, enforced early retirement of personnel trained at the taxpayer's expense is not the most efficient use of manpower. It also imposes great problems on the individual who must seek new employment in middle age because he cannot support a family on his retired pay.

Question 3. Do you subscribe in your association to the idea that exists with some that as far as diminishing agewise or continually reducing agewise the

points in time at which you become eligible has been bottomed out and because of what we are looking at in the way of age patterns and that sort of thing, that we are going to be moving before too long in the opposite direction?

NAUS response. The fighting forces must be largely composed of young men to be effective. Continuing opportunity for periodic advancement throughout a military career is also a major incentive for retention of quality personnel. Early paid retirement has been the management tool for accomplishing both these essential objectives, and it cannot be abandoned without new methods of accomplishing the same ends. There are no simple solutions, but a combination of the following is worthy of investigation:

(a) Extra retirement longevity credits for service in combat units, overseas, and various hardship assignments. By this method, those who spend most of their careers in combat units would continue to retire in 20 to 25 years. Others would have to serve longer.

(b) Reversing the up or out policy to allow longer service without promotion in many types of military assignments other than in combat units.

(c) Provision for transition of military personnel into civil service positions, particularly in the Department of Defense, without loss of seniority. With alternate provisions such as these available, NAUS would support extension of the military requirement for retirement. Simply changing the service requirement alone from 20 to 30 years, or denial of retirement pay until age 60 would destroy much of the current attractiveness of military careers.

Question 4. Do you feel that it is possible to combine social security with civil service and military retirement?

NAUS response. It is the opinion of the association that individuals should receive proper credit for each of their contributions. Years of service to the government in a civilian or military capacity each involve contributions by the employee to his retirement. In the civil service it is a contribution directly from the employee's pay check. In the military it has historically been considered an imputed contribution that is taken out of pay calculations before the individual receives his pay. When a veteran retires from civil service he should receive full credit for both his military and civil service time.

Social security also requires contributions from the employee and the benefits should be paid directly to him without regard to his other earned benefits. The association believes that the present social security requirement for the military is fair and should be extended to the civil services. Each retiree then would draw his retirement pay plus his social security benefits.

The question of social security for the civil service has already been answered in part by many civil service employees who "moonlight" in order to obtain social security credit. Federal employees were originally exempt from social security because of their own very good retirement system. Yet a federal worker can earn \$50 in each of calendar quarters in "moonlight" employment earning \$2,000 and paying \$117 in taxes—and qualify for a social security benefit of \$114.0 a month. It is understood that approximately 60 percent of retired federal employees now draw social security benefits.

GENERAL COMMENTS ON ADMIRAL RICKOVER'S RECOMMENDATIONS

NAUS commends Admiral Rickover on a thoughtful paper that contains much of great merit.

Admiral Rickover did, however, pass rather lightly over the primary reason for the twenty year retirement—an incentive for recruitment and retention of personnel.

Admiral Rickover also stated, "Today, however, military pay is generally conceded to be comparable to civilian pay." NAUS disagrees. A number of attempts have been made to link military positions with civilian positions and establish comparable levels of pay. None have succeeded. He is probably judging today's pay scales versus those he knew fifty years ago. Today, in spite of the highest rates of pay in history the military services continue to have difficulty in attracting and retaining quality personnel. To the elderly U.S. citizen the military pay scales of today appear generous because he remembers when a private received \$21 a month. The weakness of the present dollar's buying power is appreciated by today's youth when they consider prices in spite of upward adjustments. The hazard of inflation across the board is so great that few citizens are willing to gamble their future on the "advertised" security of a military career. If the early retirement provision is removed as a career incentive NAUS expects a serious decline in reenlistments. It must be kept in mind that the service career

cannot be directly equated with one in civil service. The serviceman presently gambles that he can survive twenty years of service life in order to qualify for a relatively small annuity. If he falls short of twenty years he leaves without a cent of his imputed contributions toward retirement or a retirement income at any age. The civil servant, on the other hand, can leave at anytime and retrieve what he has contributed toward his retirement, or if he has five years service, may eventually pick up a retirement income. If he serves until retirement he recoups his contributions to his retirement plan within two years of retirement.

Making a service career attractive is more difficult today than at anytime in our history. For almost two hundred years the services represented adventure, a chance to see the world and a career respected by our citizens. The Vietnam War, the antiwar rallies, and a greater maturity in our society can be blamed for removing much of the glamour from service in uniform. The recruiters, in spite of aggressive hard sells, are having problems in filling their quotas. If twenty year retirement is removed from the list of benefits it will be even more difficult to sell careers in our military forces.

This association differs with Admiral Rickover on his statement, "In my opinion, the morale of the military would be better promoted by higher salaries and fewer benefits."

The association considers that benefits are extremely important to the service way of life for both active duty and retired personnel and their families. Benefits in the form of medical care, housing, the commissary, the PX, etc., provide features that make the service an attractive life rather than just a job. The common associations developed by our military personnel and their families through use of these services contribute to the unique spirit of camaraderie that service people enjoy. Over the years there have been many erosions of the serviceman's benefits by cost conscious individuals both in Congress and in the services. Remove these benefits, as Admiral Rickover suggests, and the National Association for Uniformed Services believes that one of the greatest appeals of a service career will be gone. It is hard enough to recruit our armed forces personnel at present with these benefits.

ADDITIONAL COMMENTS ON ADMIRAL RICKOVER'S TESTIMONY

NAUS also takes exception to Admiral Rickover's suggestion of a lump sum payment to those selected out prior to thirty years service with retired pay deferred to commence at age 62. We believe that this suggestion is dangerous. If implemented, NAUS anticipates that there may be serious problems in attracting qualified careerists.

NAUS disagrees with Admiral Rickover's statement that the military retirement system is noncontributory. It has always been considered to be based upon imputed contributions. (See attached extracts from the Uniformed Services Pay Act of June 24, 1965, and Mr. Hébert's report from the Committee on Armed Services of March 25, 1971.) NAUS does agree with Admiral Rickover that the government in revamping its retirement systems, should have a phase-in period to avoid inequities.

The military retirement system has created some debatable issues—forced early retirement, voluntary early retirement, the levels of pay, and the discrimination against Regular officers as distinguished from Reserve officers, but the retiree's right to his retired pay under the terms promised him is not one of them. It is part of a contract between the individual and the federal government.

NAUS does not object to a hard look at the entire system of pay and retirement for all employees of the federal government and the military, but the military should not be singled out to bear the brunt alone.

Obviously, there must be changes in all the federal retirement systems to make their projected obligations supportable by the productive members of our society. The problem is early retirement. NAUS urges the Congress to work on the cause, not the symptom. We would not be opposed to alternatives to early retirement that phased military personnel into the civil service without retirement and loss of seniority. Until such alternatives can be developed, it would be grossly unfair to change the rules for uniformed people who are now past the point of no return in their careers.

"Catch 62" is not a military pay problem and will not be addressed by the President's Commission. It has persisted for twenty-one years and corrective legislation has been introduced in this Congress and the two previous Congresses. NAUS recommends against any deferring of this matter "for further study" and urges action now to bring H.R. 767 to a hearing this fall.

UNIFORMED SERVICES PAY ACT OF 1965

JUNE 24, 1965.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RIVERS of South Carolina, from the Committee on Armed Services, submitted the following

R E P O R T

[To accompany H.R. 9075]

The Committee on Armed Services, to whom was referred the bill (H.R. 9075) to amend title 37, United States Code, to increase the rates of basic pay for members of the uniformed services, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is threefold:

1. It will provide a much needed increase in the basic pay authorized all uniformed services personnel;
2. It will authorize the payment of a variable reenlistment bonus; and
3. It will establish a statutory requirement for an annual Presidential review of the adequacy of military pay and allowances and a corresponding quadrennial review in respect to the principles and concepts of military compensation.

NEED FOR THE LEGISLATION

Enactment of this legislation is necessary to insure that all uniformed services personnel will, now and in the future, be provided a level of compensation comparable to that enjoyed by other workers in our economy.

The failure of military pay levels to keep pace with wage adjustments provided Federal civilian employees and workers in the private sector of our economy has contributed significantly to the inability of the military departments to attract and retain adequate numbers of qualified career personnel. This fact is evident in that among the various reasons given by personnel who elect not to continue their

UNIFORMED SERVICES PAY ACT OF 1965

Deductive steps involved in determination of basic pay increases required on an annual basis

Example: Colonel (with 3 dependents) with over 26 years' service:

Representative pay desired.....		\$18,926
Less:		
Present basic pay.....	\$13,345	
Basic allowance for quarters.....	2,041	
Basic allowance for subsistence.....	575	
Tax advantage enjoyed on above basic allowances.....	837	
Imputed contribution of 6.5 percent on proposed basic pay.....	944	
		<u>17,742</u>
Increase in basic pay required.....		<u>¹ 1,184</u>

Example: Sergeant, E-5 (with 3 dependents) with over 10 years' service:

Representative pay desired.....		\$5,835
Less:		
Present basic pay.....	\$3,258	
Basic allowance for quarters.....	1,260	
Basic allowance for subsistence.....	383	
Tax advantage enjoyed on above basic allowances.....	293	
Imputed contribution of 6.5 percent on proposed basic pay.....	238	
		<u>5,432</u>
Increase in basic pay required.....		<u>² 403</u>

¹ Or base pay of \$14,529 rather than \$13,345, or an increase of approximately \$98 per month.

² Or base pay of \$3,661 rather than \$3,258, or an increase of approximately \$33 per month.

Union Calendar No. 24

92D CONGRESS	}	HOUSE OF REPRESENTATIVES	{	REPORT
1st Session				No. 92-82

AMENDING THE MILITARY SELECTIVE SERVICE ACT OF 1967; TO INCREASE MILITARY PAY; TO AUTHORIZE MILITARY ACTIVE DUTY STRENGTHS FOR FISCAL YEAR 1972; AND FOR OTHER PURPOSES

MARCH 25, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HÉBERT, from the Committee on Armed Services, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 6531]

The Committee on Armed Services, to whom was referred the bill (H.R. 6531) to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The bill as approved by the Committee on Armed Services would, if enacted, achieve the following major objectives:

1. Extend for a period of two years, from July 1, 1971, to July 1, 1973, the following provisions of law:
 - (a) The authority to induct persons into the Armed Forces;
 - (b) The authority to issue Selective Service calls for physicians, dentists and allied specialists;
 - (c) The authority to pay quarters allowances to all enlisted members of the Armed Forces, irrespective of the rank of these members, if the dependents are not furnished government quarters.
2. Make the following amendments to the Selective Service Act:
 - (a) Provide the President discretionary authority to end undergraduate student deferments;
 - (b) Repeal the existing statutory exemption provided divinity students;

Because quarters allowances are an important part of a military man's compensation, it is necessary to assure that these allowances are adequate. The standard on which an adequate quarters allowance is judged is based on the FHA median housing expense for comparable income groups nationwide.

This represents a reasonable relationship to the actual cost of housing to military personnel and is one of the most reliable measurement devices available today.

This FHA standard is widely used by both government and non-government housing activities and data is available on an annual basis. The FHA median was the basis for the last quarters adjustment provided by the Congress in 1963.

Since the FHA median reflects housing costs for income levels, it is relatively easy to convert to pay grade allowances.

The basic allowance for quarters has not been increased in eight years and has fallen seriously behind the actual housing costs experience of military families. Therefore, the Committee believes that the substantial increases in its bill are justified.

Subsistence Allowances

The bill makes slight increases in subsistence allowances to assure that these allowances properly reflect the basis on which they are and have been traditionally computed. The Department of Defense food cost index is used to determine subsistence allowances. It is considered appropriate because it is the most representative indicator of Department of Defense daily expenditure for food and is subject to periodic adjustment.

The bill eliminates separate allowances for officers and enlisted men and puts them all under the same allowance in the future.

The following table illustrates the present and proposed monthly rates of basic allowances for subsistence:

MONTHLY RATES—BASIC ALLOWANCE FOR SUBSISTENCE
PRESENT RATES AND COMMITTEE BILL

	Present ²	H.R. 6531	Dollar Increase	Percent Increase
Officers.....	\$47.88 per month.....	\$48.00 per month ¹ ..	\$0.12	0.25
Enlisted authorized to mess separately.....	\$1.52 per day.....	\$48.00 per month.....	2.40	5.3
Enlisted when rations are not available.....	\$2.57 per day.....	\$3.45 per day ³ ..	.88	34.2
Enlisted when assigned to duty under emergency conditions.....	\$3.42 per day.....			

¹ Food cost index indicates Jan. 1, 1972, rate will approximate \$1.60 per day or \$48.00 per month.

² Jan. 1, 1971, rate.

³ Increase approximates the increase in the food component of the Consumer Price Index between June of 1952 and January 1971.

Regular Military Compensation

The Congress in Public Law 90-207 defined Regular Military Compensation (RMC) as consisting of the following elements that service members receive in cash or in kind every payday: basic pay, quarters allowances, subsistence allowance and tax advantage (received because the quarters and subsistence allowances are not subject to Federal income tax).

It is the Regular Military Compensation that is used to establish competitive military pay levels which bear a reasonable relationship to civilian wages for equivalent levels of work. The RMC is based on a military pay standard so constructed that it recognizes that RMC

→ does not include a specific retirement contribution. In other words, the military compensation is depressed by 7 percent to reflect an imputed contribution towards the member's retirement.

In developing the pay proposals on which the Committee bill is based, the Department of Defense constructed a military pay standard to assure that military pay was properly equated with remuneration in other areas of national life.

The following explains how the military pay standard was devised:

A military Pay Standard is constructed by analyzing three levels of the labor force. These levels are top management, management entry, and work force entry. The work level relationships for these positions have been compared by a joint study group including representatives of the Office of Management and Budget, Civil Service Commission and Department of Defense using the following criteria:

Top Management—level of responsibility and authority, scope of impact, characteristics, the organization setting and role.

Management Entry—entry qualifications in education, experience, and training.

Work Force Entry—basic knowledge, ability and skills, and duties required.

Top Management

In top management area a comparison was made between military positions such as the Deputy Director of the Defense Supply Agency and the Chief, U.S. Army Audit Agency with civilian positions such as the Deputy Assistant Secretary of Installations, United States Air Force, and the Director, Defense Contract Audit Agency. The military and civilian grades which were found of equal level were that of an O-8 and the GS-18.

While no effort was made to establish comparison from a strictly military level of responsibility, these are the types of jobs which would be held by competent military members of that grade in general management positions.

Management Entry

Management entry qualifications were examined to test the requirements of college graduates or similar experienced personnel entering the management level. For example, military disbursing officers were compared to civilian accountants. The military and civilian grades which were related in this area were the O-1 and the GS-7.

Work Force Entry

The work force entry comparison matched personnel who in general had completed apprentice training and were actually joining the work force as productive members. The military radio code operator was compared to the civilian radio operator. A military data process operator was compared to a civilian electronic accounting machine operator. Both white collar and blue collar specialties were compared which resulted in military grade E-3 equating with Wage Board 5 and GS-3 work level.

Construction of the Military Pay Standard

As the basis of comparing the military pay system to the civilian pay system, pay levels can be assigned to these three individual work levels. In order to provide internal equity within the military pay

Mr. WAGGONER. Thank you, very much.

I see now we have my good friend, Mr. Lehman, from Florida in the room.

**STATEMENT OF HON. WILLIAM LEHMAN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. LEHMAN. Thank you, Mr. Chairman. I won't read the statement, but I will submit it for the record so we can make the vote that is coming up.

I just want to emphasize that the people in our district who are handicapped, especially people that I have been in touch with and see at different meetings, have such multiple problems.

I can recall a couple of instances, that I have not included in the testimony, of going to a hot meals program. The people that were gathered there at the community center were served meals if they were eligible for social security, 65 or 63 and over.

I saw a blind man there and he had his box lunch that he brought with him from Colonel Sanders because he could not qualify for the hot meals program. He needed these hot meals programs even more than his friends among the elderly did.

This was part of the black community hot meals program in Hallandale, Fla.

I also can recall a divorcee who was abandoned with small children. She was almost totally blind, and she was trying to support herself. Her husband left her with a home that was in a decent neighborhood. It was originally worth maybe \$20,000 or \$30,000. The home was falling apart and she was trying to get transportation for job training. She was trying to get home repair loans, and somehow or other with our crisscross of regulations, this almost totally blind person could neither qualify for home improvements or for the kind of transportation benefits that would enable her to get to a school for training.

What concerns me is that despite our efforts to get to the people who need the help the most, there are those who fall through the cracks and are not protected or covered and most need our assistance.

I thank you for including my testimony and it is a privilege to be here.

[The prepared statement follows:]

**STATEMENT OF HON. WILLIAM LEHMAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF FLORIDA**

Mr. Chairman, I appreciate the opportunity to be here this morning to testify in support of H.R. 481 which would liberalize the conditions governing the eligibility of blind persons to receive disability insurance benefits under Title II of the Social Security Act. I also wish to express thanks to my colleague, Congressman Brodhead, who has permitted me to testify ahead of him so that I may attend the mark-up session of the Second Budget Resolution which is getting underway this morning.

This legislation is very familiar to you, Mr. Chairman, since you sponsored this bill in the 94th Congress. I was a cosponsor at that time and I am pleased to be the sponsor of H.R. 481 in this Congress.

In recent months, we have become more and more aware of the special needs of the handicapped. These individuals are increasingly visible to the rest of the American public as they demand to be allowed to live full and productive lives. They are rightfully pointing out that they have consistently been victims of discrimination.

We have now an opportunity to assist a particular group of handicapped who have been discouraged from working and supporting themselves. Under the present system, a blind person risks losing his disability benefits if he is earning a living. Faced with this situation, a blind person is understandably reluctant to accept employment unless he is positive the job will remain secure and continue to pay him a decent wage. It is much easier to rely on income which is steady than to seek work which is uncertain in its future.

Blind persons normally get jobs which are insecure, low-paying and temporary. The time factor in getting disability reestablished following the termination of employment reinforces the fear of being cut off from all sources of income for a considerable length of time. I should like to add at this point that I strongly support legislation which would eliminate the waiting period between the time eligibility is determined and payments begin. I have introduced legislation to this effect and would urge the subcommittee to more fully consider such bills in conjunction with H.R. 481 and related legislation.

It is also worth noting that the blind must cope with expenses that the sighted person does not. Only recently has society begun to make any attempt to make it easier for a handicapped person to act independently. Even with these efforts, the blind still must make do in a sighted world. They must hire drivers or obtain seeing eye dogs. Special training in communication skills can be another financial burden on the blind.

By extending benefits to blind persons while they are gainfully employed, we will not substantially increase Federal expenditures. We must remember that working persons must contribute to the government in the form of income and Social Security taxes. Productive citizens must return a portion of their income to the Federal government.

We cannot afford to let a valuable resource go untapped. Through this legislation, we can accomplish a number of goals. The economy at large will benefit through the further utilization of our productive forces, and the government will gain in the form of tax contributions. Above all, the blind will have a real opportunity to seek a livelihood.

Mr. Chairman, I would like to mention two other bills which the subcommittee is now considering.

The first is the "Equity in Social Security for Individuals and Families Act" which was introduced by Congressman Fraser and Congresswoman Keys and which I am cosponsoring.

I have a deep concern about the inequities which exist under the present Social Security laws, particularly those sections which blatantly discriminate between the sexes.

Forty-two years ago, when the Social Security system was first begun, the economic role of the American woman was quite different from what it is today. This is a fact readily recognized by us all. We have not, however, translated this realization into changes in the Social Security system in order to keep it up-to-date with the rest of society. Women are no longer totally economically dependent on their husbands. The overwhelming majority of women work during some part of their lives.

Working women today face numerous problems in addition to the inequality of the Social Security system. They have to contend with unequal wages and the constant tension between home and work responsibilities. It is not possible to solve all the problem at once. We can, however, begin to alter the system and give women fairer treatment in our laws.

Woman may now qualify for Social Security benefits as retired workers based on their own earnings, or as wives, widows or aged dependents. Many working women find that they receive greater benefits by collecting as a dependent, and not as a retired worker. This is partially due to the gaps often found in the working records of women who have had to leave the active work force because of children. These absences from the labor force result in reduced average earnings thus lowering the basis for figuring any retirement benefits due in the future.

The "Equity in Social Security for Individuals and Families Act" would establish a recordkeeping system in which the earnings of the husband and wife are considered jointly, and then credited equally to each in covered employment. Under this system, both spouses develop their own earnings records based on family income, thereby eliminating the unjust effects of gaps in employment of either spouse.

This joint income concept has implications for the entire Social Security system. For instance, children will be able to receive benefits based on both parents'

Social Security accounts rather than just one parent's record. It will also provide both spouses with access to disability coverage. In addition, it will eliminate special dependency requirements which are placed on husbands and widowers before they can receive benefits from their wives' earnings.

Mr. Chairman, we must begin to rid our laws of provisions which discriminate, and I urge the subcommittee to act promptly on this legislation.

H.R. 482 is a bill I have introduced to provide that an insured individual otherwise qualified may retire and receive full old-age social security benefits, at any time after attaining age 60, if he or she has been forced to retire at that age by a Federal law, regulation, or order.

This regulation would affect a relatively small number of persons. To my knowledge, airline pilots are the only ones who are forced into early retirement because of Federal law.

While the desire to ensure the safety of the flying public was the motivation behind the this requirement, no provision was made for the persons who have been forced out of jobs. They are too young to begin to receive their old-age benefits but too old to continue on in their profession or to seek a new one.

This is just another inequity in our system which should be corrected. The cost to the Federal Government of lowering the age limit by 2 years for this small group would not be a substantial amount. I urge the subcommittee to take the time to look into this situation more closely and to see that justice is done.

Mr. WAGGONER. Mr. Lehman, the sum and substance of what you seem to be saying is that the blind choose to work and make every effort to do it, whether there is security in the job or sufficient compensation or what, and you have come to the conclusion that benefits should be extended to the blind who are gainfully employed?

Mr. LEHMAN. That is exactly the way this legislation is proposed. Maybe that would not cover all the problems but it would certainly be a step in the right direction.

Mr. WAGGONER. I would certainly have to agree with you about the desire of the blind to work.

We have a vote on in the House. The second bells are about to ring.

Thank you, Mr. Lehman.

Our next witness is our colleague from Connecticut, Mr. Sarasin.

STATEMENT OF HON. RONALD A. SARASIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. SARASIN. Mr. Chairman, I would ask permission to simply file my statement with the committee: I know the second bell will ring for a vote on the floor, so I will not delay the committee by offering oral testimony.

Mr. WAGGONER. We thank you for coming and your statement in its entirety will be printed in the record.

Thank you.

[The prepared statement follows:]

STATEMENT OF HON. RONALD A. SARASIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman, I would like to thank you and the other members of this Subcommittee for granting me this opportunity to testify before you today. As the fourth ranking Minority Member of the Committee on Education and Labor, I am deeply concerned over the economic and social adversity our nation's blind persons too often confront.

This adversity stems not from lack of sight, but from lack of opportunity. It is time we provided the blind with the means to enjoy productive and purposeful lives. We can accomplish this with passage in the 95th Congress of H.R. 3049, the Disability Insurance Bill, which will amend Title II of the Social Security Act.

The provisions of this legislation would make two fundamental and far-reaching changes. First, it would allow blind persons with six quarters of covered work fully insured status for disability insurance purposes, regardless of their earnings. Second, it would eliminate the substantial gainful activity test, thus acknowledging blindness itself as a disability.

It is all too clear that this Committee's action on H.R. 3049 is necessary and prudent. The current program rewards indolence and penalizes industriousness. For example, if before blindness an individual had an income of \$15,000 dollars a year, after blindness that same individual will probably find employment for \$6,000 dollars a year. For attempting self-sufficiency and working at this \$6,000 a year job, the blind person jeopardizes his disability benefits. By going back to work after losing his much better paying job, he has demonstrated that his blindness does not prevent him from engaging in gainful and substantial activity. Consequently, he suffers a tremendous reduction in his real income because the present law disqualifies him from disability benefits under complex provisions dealing with allowed earnings and definitions of substantial gainful activity.

The blind person is encouraged to remain on disability insurance which pays up to \$10,800 dollars a year and provides medicare eligibility. And who can blame him? His alternatives are few. Either a blind person works and attempts to provide for himself, or he does not work and other members of society must provide for him. Under our present system of Social Security, Supplemental Income, and other income maintenance programs the majority of blind persons fall into one of three categories: (1) Those who are employed and paying taxes; (2) Those who are unemployed and beneficiaries of Social Security Disability Insurance; and (3) Those who are unemployed and recipient of Supplemental Security Income payments and other welfare grants.

As blind persons continue to draw benefits from Social Security taxes, we can anticipate dramatic increases in these taxes. This will intensify the disillusionment many Americans find with big government and federal spending. However, if the insurance bill passes it will be providing blind persons with the incentive to find employment. They will become taxpayers instead of tax burdens. In addition, most of the blind who are currently recipients of Supplemental Security Income, and their families who benefit from various federal, state and local welfare programs will be able to transfer into the improved disability insurance program, thus resulting in a cost saving in the welfare program.

However, the very rich would qualify for disability benefits, provided they had paid Social Security taxes for six quarters. Does this program not smack of Robin Hood in reverse—taking from average American taxpayers and giving to wealthy persons based on the criteria that they are blind?

No. First, most blind are not wealthy and; second, the disability insurance program is an insurance program just as its name states. It is not a welfare program. The disability insurance program was established to provide benefits for persons to partially replace loss of income due to disability. The program provides a subsidy to individuals on the basis that they are members of a particular group entitled to receive the subsidy because they fall into a particular category.

Veterans, too, receive benefits as a result of partial disability to compensate them for lost earning potential. Just as national disasters can be devastating in their totality, and as partial disability can be painful and destructive to our servicemen, blindness also is often devastating; and it incurs social needs. Blind persons often face the sudden termination of wages, diminished earning power, curtailed employment opportunities, and reduced chances for advancement once employment has been secured. For these reasons they are entitled to a subsidy in the form of improved disability insurance.

This legislation is characterized by sound fiscal policy and is consistent with our democratic beliefs. The blind have received abundant sympathy and widespread charity. They deserve something much simpler, and yet far better. They can be productive members of society. They are proud. They are capable of accomplishing a significant portion of what sighted people can do.

Blind persons have been denied the fundamental opportunity to become self-sufficient and independent for too long. Enactment of this legislation in the 95th Congress would correct this inequity and return the option of productivity and participation in society to thousands of blind Americans.

Again, I wish to thank the Subcommittee for affording me this opportunity to testify.

Mr. WAGGONER. Our next witness will be our colleague from Indiana, Mr. Cornwell.

**STATEMENT OF HON. DAVID L. CORNWELL, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF INDIANA**

Mr. CORNWELL. I also have a statement I would like to include in the record. If you don't mind, I have another committee meeting that begins at 10:30.

Mr. WAGGONER. We will be happy to have your entire statement and we appreciate your interest in these hearings. Your statement in its entirety will be printed in the record.

Mr. CORNWELL. Thank you very much.

[The prepared statement follows:]

**STATEMENT OF HON. DAVID L. CORNWELL, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF INDIANA**

Mr. Chairman, I want to thank you and the members of the committee for the opportunity to testify before you today. The bill I offer, cosigned by 60 of our Colleagues is a simple one. It says that if the regular delivery date for a social security check falls on a Saturday, Sunday, or legal holiday, then the check will be delivered instead on the first regularly scheduled business date before. In 1976, an agreement was reached with the Department of Treasury and the Postal service to date and deliver benefit checks on an earlier bank work day when the third of the month, the regular delivery day, falls on a Saturday or Sunday. With no need for additional appropriations, my bill makes two minor, yet important changes in that ruling. First, it would expand the policy to include the situation wherein the delivery date occurred on a legal public holiday that was not a weekend. Second, it would allow the checks to be delivered prior to the first of the month in the rare instance when the third of the month came on a Monday legal holiday. In making the 1976 decision, the Social Security Administration did not include these two provisions, claiming that statutory law did not allow this prior month delivery. The bill I offer would eliminate the statutory restriction and clear the way for the implementation of this policy.

The need for the 1976 ruling was evidenced by the perennial complaints that Congress received when the delivery date of the third fell on a Saturday, Sunday or Holiday. In the Saturday case, the check was delivered. However, because most banks were closed, the check could not be cashed until Monday, the 5th. In cases where that Monday was a Holiday as well, the check could not be cashed until Tuesday, the 6th. If the Third fell on a Sunday or Monday holiday, again the situation occurred where the check could be neither delivered nor cashed until the next business day.

I need not elaborate upon the hardships that this presents to a family or individual who counts on timely delivery of the check to pay for monthly rent, utilities, food and medical bills. Over thirty-two million Americans receive monthly social security benefits, and in many instances, the social security check is the main, if not only, source of income. These recipients often budget their money tightly, sometimes down to the last dollar. A two- or three-day hiatus without any available cash, the result of a Saturday delivery, places an unnecessary hardship on those who dutifully paid in for years and are legally entitled to the benefits. Had that 1976 ruling not taken place, a two-day delay would have occurred this year at the beginning of September and December. A one-day delay would have occurred in April and July. The proposal of my bill to include the Monday legal holiday situation will eliminate the one last loophole in this ruling. The first time that it would be applicable would be in September of 1979, when the third falls on a Monday, Labor Day. The check would then, according to my proposal, be delivered on August 31. The only necessary adjustments for this prior-month delivery would be to require that the Treasury put a notice on either the envelope or the check alerting the recipients to the fact that the check is for August benefits usually received in September. The printing cost here is negligible, especially in comparison to the cost of inconvenience that would otherwise be borne by the recipient of the check.

It has been asked of me whether this prior-month delivery could distort the budget in a hypothetical situation where there could be thirteen payments in one year and eleven in the next. This could only happen if the October delivery date fell on a Monday public holiday and our current calendar has no public holidays on October 3.

I introduce this legislation with the belief that wherever possible the law ought to reflect our concern for those who receive, need, and have earned federal benefits by virtue of their long work and service to the Nation. The 1976 administrative ruling is just that, a ruling that can be easily rewritten and erased. A law cannot be. If we are indeed serious about making this ruling permanent, we, the elected representatives of the people, should give this regulation the full force of law. In cases like this, I strongly feel that we should not leave it up to the unelected bureaucrats to change regulations as they see fit. It is Congress that is accountable to the people, and therefore we should take the lead in setting the policies that so profoundly affect the lives of millions of people in this country.

Lastly, let me state that as you well know we are not dealing here with government gifts. These entitlements are earned benefits which ought to be promptly delivered to those who labored to earn them so they can be used for the necessities of life. Without an additional appropriation of funds, we can expedite this, our responsibility.

I urge you to consider this modest, yet important proposal.

Thank you very much.

Mr. WAGGONER. The second bells have rung. There are no others in the room. If no other members show up, we will proceed to hear Helene Phillips of the Mountain Plains Congress of Senior Organizations, if she has arrived.

The committee will be in recess until this vote has been completed.
[Brief recess to go vote.]

Mr. WAGGONER. The committee will resume its sitting.

We will now hear from our colleague from Iowa, Mr. Berkley Bedell.

STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. WAGGONER. Berkley, without objection, your entire statement will appear in the record and you may proceed in your own way.

Mr. BEDELL. Thank you. I have a short version of my testimony.

Thank you for this opportunity, Mr. Chairman, to appear before your committee.

We are all aware of the nature of the problem of social security. Trust fund expenditures are simply exceeding income and according to the 1977 report if the current trend continues we are going to have a fund depleted by the early 1980's and annual deficits will occur for every year in the future.

There are two distinct aspects to this problem, the short term and the long term, and Representative Charles Whalen and I have introduced legislation, H.R. 8368 and H.R. 7154, which addresses both of those problems in what we feel is an equitable and effective manner.

H.R. 8368 could cut the long-term social security deficit by half by decoupling the present system.

I don't think I need to explain coupling and decoupling to this committee. We have some charts here that explain it but I am sure the committee is well enough aware of this particular problem.

I would like to go into a little bit of the details of how we would propose to handle our decoupling. The formula would be we would take, first of all, the high 10 years of covered earnings.

I think it is critical that you go to a definitive number of years to use. Right now, the present social security system, as I am sure you are well aware, has eight complicated steps for someone to go through before they can even go to the chart, and depending on when you were born, they determine the number of years you will use.

If you are born after 1930, they use 35 years of average earnings. Almost every retirement plan uses a limited number of years of highest earnings. Since the 10 years is what you need or 40 quarters to qualify under social security, it seems to us you should use the 10-year period.

We use 112 percent of the first \$110, 31 percent of the next \$940, and 20 percent of all average monthly earnings over \$1,050. We would propose the \$110 and the \$940 be adjusted according to Consumer Price Index from year to year to reflect the increase in average earnings, but that the 112 and the 31 and 20 percent remain each year so that you, in effect, remove the problem that we now have of compounding the increase in social security which we believe is a simple method.

We have also proposed our legislation that no one would suffer a reduction as a result of this formula. If the present formula would remain in effect for those people for whom this would result in any decrease in their earnings at this time and it would remain in effect until such time as they would switch over to this because this would be to their advantage to switch over to this simpler method.

It appears to us we have a formula the people will be able to understand. It is based on the 10-year average. People would not lose by it.

The second bill calls for increasing the wage base more rapidly which would help the short-term problem. We would bring it up to \$30,000 by 1981.

Mr. SCHULZE. Equally on employer and employee?

Mr. BEDELL. Yes.

I think that concludes my testimony, Mr. Chairman.

I have some other charts I would be glad to show you. You are short on time.

If you have the one there that shows the other plans, it might be of some help.

Mr. WAGGONER. These appear to be the identical charts Mr. Whalen had.

Mr. BEDELL. These are other retirement systems, and almost without exception, they go by either a 3 or 5 or 10-year highest average annual earnings in order to determine the retirement benefits.

It simplifies things so terribly much rather than people having to figure for 35 years what their average annual earnings were.

Mr. WAGGONER. There is no doubt about it that Mr. Bedell and Mr. Whalen have done an awful lot of work in the area of decoupling, probably as much detail work or more than any member of Congress has to arrive at something that is a bit more simple than we presently have.

I don't think you have assumed anything except that what you propose is more of a long-run value than it is of immediate value.

Are there questions?

Mr. SCHULZE. Mr. Chairman, I would like to thank my friend and colleague for a well thought out and well presented program.

Mr. LEDERER. No questions.

Mr. BEDELL. I would like to commend the committee for looking at this problem and going after it. It is something we have ignored way too long.

[The prepared statement and attachments follow:]

STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. Chairman, thank you for this opportunity to address your Subcommittee on the crucial issue of social security financing.

The financial stability of the social security system is of great concern to us all. In recent years, we have heard much discussion about projected deficits in the system which, in turn, have precipitated alarm in Congress and throughout the country. Working people, who are currently contributing to the system, are worried that they may not receive their proper benefits when they retire, and retirees are concerned that their benefits, in many cases already inadequate, might be reduced at some future date. This is an untenable situation for both beneficiaries and workers, and it is time for the Congress to devise a responsible and effective solution to the social security financing dilemma.

The general parameters of the problem are well-known. The social security system faces both an immediate and a long-range financial crisis. The 1977 report of the Trustees of the social security trust funds indicates that the social security cash benefits programs—old-age, survivors, and disability insurance—will be depleted by the early 1980s unless additional financing is provided and that the annual deficits will grow each year in the future.

The primary cause of this development in the short-term has been the phenomenon of stagflation which, in the 1970's has had a deleterious impact on benefit payments and income. In the long-run, the effect of short-term conditions on long-range projections, combined with the effects of changes in economic and demographic assumptions, have resulted in increases in the estimated cost of the program in relation to anticipated income.

What can be done to alleviate this problem?

In my judgment, the financing dilemma of the social security system has two distinct aspects to it—the short-term and the long-term. Representative Charles Whalen and I have introduced legislation—H.R. 8368 and H.R. 7154—which address both problems in what we feel is an effective and equitable manner.

The projected long-range imbalance in funding in the social security system is attributable to two primary factors: 1) a basic change in demographic trends which have created a situation where fewer workers will be supporting a larger retired segment of the population; and 2) a flaw in the automatic formula for the computation of benefits which was established in the Social Security Act Amendments.

There is little that Congress can do about the demographic situation. However, it can enact legislation to correct the statutory problem created by the 1972 Social Security Act Amendments.

Under current law, payments for future retirees are "coupled" with automatic adjustments for present retirees. Each time present retirees receive an automatic cost-of-living increase, that increase is applied to benefits awarded in the future, and the ratio of benefits to earnings (for future retirees) is thus also raised. The net result is that current law overcompensates future beneficiaries for increases in the cost-of-living, and, if the present situation continues, many future retirees will actually draw larger social security benefits than their wages before retirement.

Chart #1 illustrates the affect of automatic cost-of-living increases in both present and future retirees.

Suppose a worker retires with an average monthly wage (AMW) of \$200 and receives a benefit of 50% of his AMW, or \$100 per month. If a one-time inflation of 10% occurs, the benefit percentage would automatically increase by 10% to a new value of 55%. The worker would then start receiving benefits of \$110 per month—55% of \$200. This procedure correctly adjusts for inflation for retired workers.

The overcompensation arises for employed workers whose wages rise during periods of inflation. Workers who retire after such a period will have earned higher wages and hence will have a higher average monthly wage (AMW). When they retire, however, the benefit percentage applied to their earnings

history will also have risen in the process of providing compensation for inflation.

Returning to the previous example, a worker's salary, after a 10% rise in the Consumer Price Index, may increase 10% from \$200 per month to \$220 per month. Upon his retirement, the AMW will consequently be about \$210 per month. His benefit would be about 55% of \$210 or \$115.50 per month, which is \$5.50 higher than the benefit being received by the worker with the same real income who retired earlier.

H.R. 8368 would correct this situation by eliminating the provision of the 1972 Social Security Act Amendments which applies the present automatic benefit increase mechanism both to benefits after retirement and to the formula for initially determining benefits for new retirees, and by establishing a new, three-step progressive benefit formula based on the average of the wages earned in any "high ten" years of the worker's employment. This change would assure that future benefit levels will not be tied to wage and price increases and that replacement rates will remain relatively constant. Such a change would not, of course, restrict benefit amounts which would continue to be based on the Consumer Price Index.

This proposal would cut the predicted long term social security trust fund deficit in half. It would also simplify accounting procedures, and make the benefits system comprehensible to the layman. And, it would give a fair shake to workers who participate in the social security system, while having no effect on present retirees. The bill contains a ten year "hold harmless" provision to avoid inadvertent lowering of benefits for any individual.

In his testimony before this Subcommittee last week, Representative Whalen quoted an excerpt from a recent Congressional Research Service publication which provides an excellent summary of the long-range social security financing problem. Although this material has already been presented to the Subcommittee, I think that it would be worthwhile to repeat it here today.

The report states that, "Under the present law, the period over which wages are averaged depends on the year in which an individual reaches age 62 or dies. For example, an individual who becomes 62 in 1977 gets a retirement benefit based on wages averaged over 21 years, an individual who reaches 65 in 1978 will require 22 years and so on until the maximum averaging period, 35 years, is reached in 1981. This lengthening, averaging period is one of the factors which seems to complicate proposals to change the benefit computation in a way which would be both equitable and reduce long-term costs. On the other hand, if benefit formula (or an approximation of it) with wages averaged over a high-X number of years of earnings (the X could be equal to as few as one or two years or as high as the present level), a significant reduction in long-term costs could result. In fact, conversations with various actuaries have indicated that one can develop a high-X formula which would provide equitable benefits with relatively stable replacement ratios for the next decade or so and which could have a long-term surplus under actuarial estimates based on the economic and demographic assumptions used for the 1976 report of the trustees."¹

I believe that the Whalen-Bedell decoupling proposal, with its simplified benefit formula, would make a major contribution to resolving the long-term financing problems of the social security system in the best interest of beneficiaries and workers alike.

At this point, Mr. Chairman, I want to emphasize that I am not suggesting that the enactment of a decoupling proposal would constitute a panacea for the financing problems of the social security system. In addition to restoring the solvency of the system over the long haul, we must also increase revenues fairly quickly to avoid short-term deficits. Representative Whalen and I believe that the best way to achieve this end is to raise the current taxable wage base ceiling over a three year period.

The social security system is financed by the most regressive of all taxes—the payroll tax. Under present law, the social security tax is levied on the first dollar of earnings up to a maximum amount specified by law. Thus, the more money an individual earns, the less he contributes to the system in terms of a total percentage of his income. Or, to put it another way, an individual's tax rate in effect declines as his or her wages rise above the maximum taxable wage base. An individual earning \$30,600 per year in 1976, for example, in effect paid only half the tax rate on this total earned income for social security purposes as did a person earning \$15,300 or less. This is clearly inequitable.

¹ Frank J. Crowley, *Social Security Case Benefits—Indexing, Decoupling, and the Long-Term Deficit*, Congressional Research Service, 77-30 ED, 2/2/77.

I believe that the fairest means of raising additional short-term revenues for the social security trust fund is to increase the maximum wage base counted for computation of benefits and for contributions to a more realistic level. The Whalen-Bedell wage base bill, H.R. 7154, would do this by increasing the ceiling on the amount of earnings which may be taxed for social security purposes from \$16,500 in 1977 to \$30,000 in three stages by 1980. Under existing law, this ceiling, which is automatically adjusted upward each year in small increments, would rise to \$20,400 by 1980. Congress intended the wage base ceiling to rise to offset inflation, but the projections used to set the current schedule, as established by the 1972 Social Security Act Amendments, were inaccurate. The Whalen-Bedell proposal simply revises this automatic adjustment in keeping with current economic reality.

This wage base legislation would increase the percentage of covered workers who pay taxes on all of their wages from the current 85 percent of eligible employees to 95 percent of such persons, which was the level attained when the social security system was originally established. It would also rebuild the system's assets from \$41.1 billion at the end of 1976 to at least \$58.4 billion by 1983. Without revision of the existing wage base ceiling, those assets will be completely exhausted by 1982.

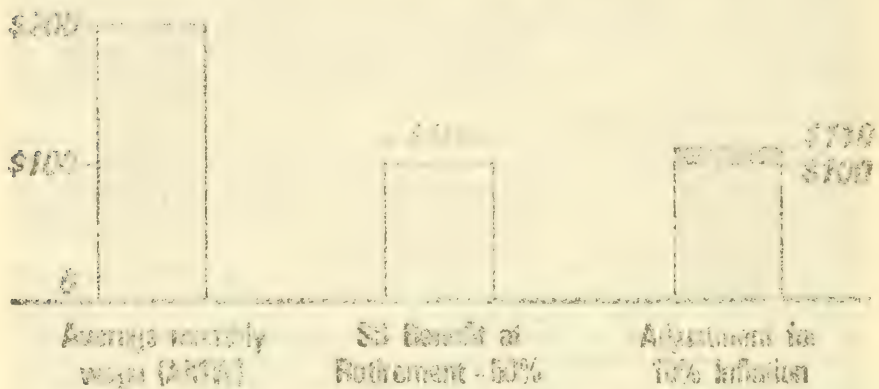
In my judgment, the Congress must face up to both the short-term and long-term financing problems of the social security system. It should address the immediate problem by making the social security payroll tax more progressive, and it should deal with the long-range problem by decoupling the current benefit structure. In the process, it should try to make the entire system more responsive and more comprehensible to those who participate in it.

Mr. Chairman, more than 33 million people are currently receiving social security benefits. About 108 million workers will pay social security taxes this year. It seems to me that these individuals, who are compelled to participate in the social security system, should be entitled to equitable treatment and should have confidence in the viability and responsiveness of their program. Sadly, this does not appear to be the case at present. I hope that the work of this Subcommittee will make a substantive contribution to remedying this unfortunate situation.

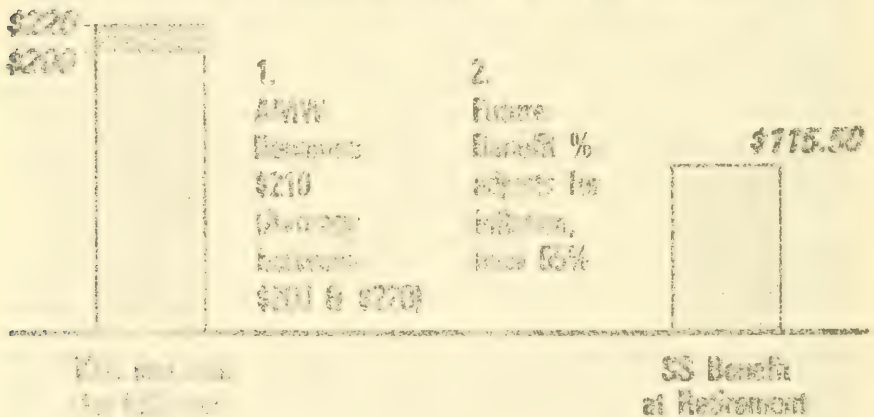
Thank you.

Comparison Between Automatic Adjustment for Retired Worker and the Employed Worker

► Automatic Adjustment for Retired Worker



► Automatic Adjustment for Employed Worker



**SOCIAL SECURITY OASDI TAX FOR VARIOUS INCOME LEVELS UNDER THREE PROPOSALS,
1981 REGARDING THE WAGE BASE FOR CONTRIBUTIONS¹**

Income level	Existing law (employee, employer, each)	Administration proposal		Whalen-Bedell proposal (employee, employer, each)
		Employee	Employer	
\$8,000.....	\$504	\$504	\$504	\$504
\$10,000.....	630	630	630	630
\$12,000.....	756	756	756	756
\$14,000.....	882	882	882	882
\$16,000.....	1,058	1,058	1,058	1,058
\$18,000.....	1,134	1,134	1,134	1,134
\$20,000.....	1,260	1,260	1,260	1,260
\$22,000.....	(\$21,900) 1,379	1,379	1,386	1,386
\$25,000.....	1,379	(\$23,100) 1,455	1,575	1,575
\$30,000.....	1,379	1,455	1,890	1,890
\$50,000.....	1,379	1,455	3,150	1,890

¹ 6.3 percent OASDI.

Source: Congressional Research Service, Francis J. Crowley.

**ESTIMATED OPERATIONS OF OASDI TRUST FUNDS, COMBINED UNDER PRESENT LAW AND UNDER THE SYSTEM
AS MODIFIED BY WHALEN-BEDELL PROPOSAL, CALENDAR YEARS 1975-85¹**

(In billions)

Calendar year	Income		Outgo		Net increase in funds		Assets at end of year		Assets at beginning of year as a per- centage of outgo during year	
	Present law	Proposal	Present law	Proposal	Present law	Proposal	Present law	Proposal	Present law	Proposal
1975.....	\$66.5	\$66.5	\$69.5	\$69.5	+\$3.0	—\$3.0	\$42.9	\$42.9	66	66
1976.....	72.3	75.4	78.1	78.1	—5.8	—2.8	37.1	40.1	55	55
1977.....	81.8	88.0	87.5	87.5	—5.8	.5	31.3	40.6	42	46
1978.....	91.1	99.9	97.1	97.1	—6.0	2.8	25.4	43.4	32	42
1979.....	100.3	110.9	107.1	107.2	—6.8	3.7	18.6	47.1	24	41
1980.....	109.1	121.2	116.8	117.0	—7.7	4.2	10.9	51.3	16	40
1981.....	116.9	130.6	126.5	126.9	—9.7	3.7	1.2	55.0	9	40
1982.....	124.6	139.9	136.8	137.4	(*)	2.5	(*)	57.5	(*)	40
1983.....	132.6	149.7	148.0	148.9	(*)	.8	(*)	58.4	(*)	39
1984.....	140.9	160.1	160.3	161.6	(*)	—1.5	(*)	56.9	(*)	36
1985.....	148.8	170.3	173.5	175.2	(*)	—5.0	(*)	41.9	(*)	32

¹ A proposal to increase the wage base for contributions from \$15,300 in 1976 to \$22,200 in 1977, to \$26,100 in 1978 and to \$28,500 in 1979.

² Funds exhausted in 1982.

Source: Social Security Administration, Office of the Actuary, July 30, 1975.

Mr. WAGGONER. We thank you for coming, Mr. Bedell.

We will now hear from our colleague from Connecticut, Mr. Moffett.

You may proceed in your way, Toby, and the entire statement will be included in the record.

STATEMENT OF HON. ANTHONY TOBY MOFFETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. MOFFETT. Thank you for allowing me this opportunity.

I am here today to support the modifications of the disability insurance program for the blind under title II of the Social Security Act, modifications contained in the bill offered by Chairman Burke, H.R. 3049. I will not read my entire testimony but would like to make some points from it.

Blindness is a handicap in which the social or attitudinal barriers are at least as great as the barriers caused by loss of sight, if not more so. The commonly held notions of blindness, which have been held since before the start of civilization, are that it causes a person to be totally helpless, fit only to be sidelined from the major activities of life and to be treated as a dependent.

These notions, in fact, are flatly contradicted by the experience of literally thousands of blind persons who have successfully adapted to functioning without sight in the most complicated and demanding areas—as doctors, lawyers, scientists, and technicians.

But realizing the wide gap between what is possible in terms of successful adjustment and achievement and what is the most likely, everyday consequence of blindness, the Congress has wisely allowed blindness itself to be considered evidence of disability.

Yet, as is often the case, what we give with one hand, we take away with the other. We recognize that the employment prospects for the blind are so limited as to make blindness in practice almost the same thing as unemployability.

But when it comes to the earnings limitation and the trial work period which are parts of the disability program, we seem to forget this. Suddenly we seem to believe that if a blind person finds work at all, and if he earns even a pittance for a short period of time, then the blindness is not a disability, and all benefits should end.

Thus, even if a blind person, after being declared eligible for benefits, should get a job, however minimal or insecure, hold it for 9 months, and at the end of the time earn as much as \$200 a month, he is considered capable of substantial gainful work and all of his benefits cease. I would think this does not make sense.

The earnings limitation grows out of the idea that blindness need not be a barrier to full self-support and full productivity.

Mr. Chairman, we know this can be so, and I could fill this room with persons for whom it is so, persons holding positions of great responsibility and who have achieved wide recognition. But this room, indeed all of the rooms in this city, could not hold the blind persons with equal ability and capacity who are forced to sit idle or to accept jobs grossly disproportionate to their abilities.

I have included in my testimony an example of one of my own constituents, a blind woman from Torrington, Conn., which is by no means unique.

This is the bind which faces all blind persons in the work market. Whether they are skilled with their hands or whether they have university degrees, in the present cultural climate regarding blindness, they can never be sure that their jobs are secure.

What they can be sure of is that enough attempts to work will almost certainly result in the loss of disability benefits. Until the employment situation facing the blind has dramatically and radically improved, it must be said that the efforts of the Government, as expressed in the disability insurance program, are ill thought out and negative in effect.

I would like to include in the record a letter from Jonathan May of the National Federation of the Blind of Connecticut, Inc. He is a leader of the blind and a blind person himself and a leader in the State of Connecticut, and among the things he says is that "Exist-

ing social security law penalizes capable blind persons who attempt to return to work. This must be changed."

He goes on to explain how he perceives the inequities take shape. He points out that most working-age blind persons want to become self-sufficient and seek rehabilitation and a job, but he says the present disability program traps many blind persons into demeaning dependency, frustration, and wasted lives.

If a blind person does overcome the fear of benefit and medicare loss and successfully finds remunerative employment, according to Mr. May, he often gets a job which pays substantially less than he normally earned with sight.

In addition, he must now bear the extra costs of hiring readers and drivers and purchasing special tools. Mr. May concludes passage of the Burke disability insurance for the blind would make the social security disability income for the blind program a true insurance.

It would provide a social insurance subsidy to partially offset the extra disabling costs of competing in a sight-structured society.

Mr. Chairman and members of the subcommittee, I know that you have had a concern in this area and that you are concerned also about how much something like this would cost. That is wise and you are to be commended for that.

At the same time, I know, Mr. Chairman, that you have been very concerned about work incentives and allowing people to work when they like to work and have the desire to work, and so have I. I think the passage of H.R. 3049 would move us in the direction of a policy which accomplishes that.

I urge you to give it your full consideration and support and thank you for having me here.

[The prepared statement and attachment follow:]

STATEMENT OF HON. TOBY MOFFETT, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF CONNECTICUT

Mr. Chairman, I am here today to support the modifications to the disability insurance program for the blind under title II of the Social Security Act—modifications contained in your bill, H.R. 3049. There are parts of the disability program with respect to the blind, Mr. Chairman, which are laudable and which recognize the peculiar problems faced in our society by blind persons, as opposed to those with other disabilities. Blindness is a handicap in which the social or attitudinal barriers are at least as great as the barriers caused by loss of sight, if not more so. The commonly held notions of blindness, which have been held since before the start of civilization, are that it causes a person to be totally helpless, fit only to be sidelined from the major activities of life and to be treated as a dependent.

These notions, in fact, are flatly contradicted by the experience of literally thousands of blind persons who have successfully adapted to functioning without sight in the most complicated and demanding areas—as doctors, lawyers, scientists, and technicians. But realizing the wide gap between what is possible in terms of successful adjustment and achievement and what is the most likely, everyday consequence of blindness, the Congress has wisely allowed blindness itself to be considered evidence of disability. This is a way of recognizing that, whatever a blind person may be capable of doing, in hard fact he will seldom be given the chance to do it, and that blindness is almost certain to produce economic disability.

Yet, as is often the case, what we give with one hand, we take away with the other. We recognize that the employment prospects for the blind are so limited as to make blindness in practice almost the same thing as unemployability. But when it comes to the earnings limitation and the trial work period which are parts of the disability program, we seem to forget this. Suddenly we seem to

believe that if a blind person finds work at all, and if he earns even a pittance for a short period of time, then the blindness is not a disability, and all benefits should end. Thus, even if a blind person, after being declared eligible for benefits, should get a job—however minimal or insecure, hold it for nine months, and at the end of the time earn as much as \$200 a month, he is considered capable of substantial gainful work and all of his benefits cease.

This is an absurdity. The earnings limitation grows out of the idea that blindness need not be a barrier to full self-support and full productivity. Mr. Chairman, we know this can be so, and I could fill this room with persons for whom it is so—persons holding positions of great responsibility and who have achieved wide recognition. But this room, indeed all of the rooms in this city, could not hold the blind persons with equal ability and capacity who are forced to sit idle or to accept jobs grossly disproportionate to their abilities.

Let me give you an example concerning one of my constituents—a blind woman in Torrington, Conn. It is by no means an out-of-the-way example. This woman was fully employed as a factory worker. When work became short at the factory, her job was ended. It is typical that blind workers are the first to go when cuts are made. After some time, this woman got a minimal, part-time job. For the next 6 months she worked an average of 5 days a month, before being let go once more. This pattern, again, is typical. Now she works in the state's home industry program. She earns about \$12 a month. She supports herself, needless to say, not on her earnings, but on her disability benefits. But as the disability program presently stands, these benefits have been jeopardized by even the little work she has done. The 6 months during which she worked 5 days a month are regarded as 6 of the 9 months of her "trial work period." Were she to obtain another such job and work for 3 more months, and were she by chance to work enough days in that ninth month to earn \$200, she would be declared capable of "substantial gainful work." At that point, she would be given 3 months more of benefits and then cut off for good, whether or not she still had a job.

There are two glaring points which emerge from this discussion. The first is the one I have already mentioned. Of course this blind woman is capable of substantial gainful work. She was doing such work before she lost her first job and she could do it again. But in the atmosphere of society's attitudes toward blindness she is not, and may never be, economically stable. She may never gain a job with any more security or chance for advancement than the one she lost.

The second point is that now, having already lost 6 of her 9 months of the trial work period, she dare not even look for work. She may find herself declared capable of gainful work, but then be out of a job and cut off from benefits.

This is the bind which faces all blind persons in the work market. Whether they are skilled with their hands or whether they have university degrees, in the present cultural climate regarding blindness, they can never be sure that their jobs are secure. What they can be sure of is that enough attempts to work will almost certainly result in the loss of disability benefits. Until the employment situation facing the blind has dramatically and radically improved, it must be said that the efforts of the government, as expressed in the disability insurance program, are ill-thought-out and negative in effect.

Until the day when the blind are accepted as normal members of the work force and are given the chance to compete on the same basis as sighted workers, the continuance of disability benefits, unaffected by earnings, as proposed by H.R. 3049, is but a small corrective and equalizer, but it is one we should support. This is why I most strongly urge that we do all we can to see that the provisions of H.R. 3049 become law. Thank you.

NATIONAL FEDERATION OF THE BLIND
OF CONNECTICUT, INC.,
South Glastonbury, Conn., February 1, 1977.

HON. TOBY MOFFETT,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MOFFETT: As a blind person and member of our country's organized blind consumer movement, I want to thank you again for co-sponsoring the Disability Insurance For The Blind bill, H.R. 281, which was introduced by Congressman James A. Burke in the last Congress. Congressman Burke plans

to introduce an identical disability insurance bill within a few days in this 95th Congress, and the many members of the National Federation of the Blind of Connecticut would be very grateful if you would sign on as an early co-sponsor of the Disability Insurance For The Blind bill. The continued need for action on this vital legislation is urgent.

As you may recall, the Disability Insurance For The Blind bill would change the Social Security disability insurance for the blind program to: First, reduce to a standard of six, the number of quarters a legally blind person must contribute in tax premiums to be eligible to receive Social Security disability benefits. Second, the bill would change the very negative incentive structure of the current Social Security disability program for the blind and continue disability income benefits to a person for as long as he or she remains blind; regardless of any amount of earnings he or she might make in a successful struggle to return to work.

Under existing law, a blind person must contribute tax premiums under Social Security covered employment from 6 to 25 quarters (depending on age and onset of blindness) to qualify for Social Security disability income benefits. As widespread public ignorance causes denials and massive discrimination in employment of the blind, those blind persons who do find work often get jobs that are temporary, tenuous and low paying. For persons blinded before their working years, acquisition of a large number of quarters to qualify for disability benefits is an immense task. Reduction of the eligibility requirement for the blind to a standard six quarters would equalize accessibility to insurance coverage. This would extend disability insurance coverage to numerous blind Americans who cannot qualify under the present program.

Existing Social Security law penalizes capable blind persons who attempt to return to work, and this must be changed. Under the current program, if a person loses his sight and is thrown out of work after working sufficient quarters, he can expect to collect monthly disability insurance benefits for himself and his dependents for the rest of his life, as long as he remains blind, and as long as he does not receive wages and remains idle. Most blind people feel the monthly Social Security checks provide a floor of income security to themselves and their dependents. However, the Social Security disability checks are not generally adequate to provide for all of a family's needs in these hard economic times. Most working-age blind persons want to become self-sufficient and seek rehabilitation and a job. They do face the gnawing fear that if they do make any reportable earnings, their case will be examined by the Social Security board. If they demonstrate a capacity to earn roughly \$230 gross pay in a month, they know they will lose entitlement to Social Security disability income for the rest of their lives. Given the rejections faced by the blind in a hostile job market, a Social Security disability recipient runs the risk of being laid off or terminated and being unemployed for long periods of time; thus exposing himself and his family to a loss of income security from both Social Security disability income checks and loss of wages. Even if Social Security disability payments are not adequate to provide for all a blind person's family needs, the risk of loss of this guaranteed income security is often a risk much too great for blind persons to take. The present disability program then traps many blind persons in demeaning dependency, frustration and wasted lives. This is terribly wrong and unfair.

If a blind person does overcome the fear of benefit and Medicare loss and successfully finds remunerative employment, he often gets a job that pays substantially less than he formally earned with sight. In addition, he must now bear the extra cost of hiring readers and drivers and purchasing special tools. In many instances, after deduction of taxes and the added costs of competing without sight, the blind person's net pay is less than or roughly equivalent to the monthly amount of Social Security disability checks he was guaranteed to receive when idle. Passage of the Burke Disability Insurance For The Blind bill would make the Social Security disability income for the blind program a true insurance. It would provide a social insurance subsidy to partially offset the extra disabling costs of competing in a sight structured society.

Passage of the Social Security Disability Insurance For The Blind bill would make tax producers out of many blind tax consumers. It would provide incentives to thousands of capable blind workers to return to work. It would bring in added Social Security revenues and state and federal taxes and remove many of the blind from the federal S.S.I. program and local welfare rolls. It would liberate many blind people from economic captivity and restore to them, human dignity.

The return of unemployed Americans to productive jobs is a high priority of the 95th Congress and the new Administration. Most federal job creation programs have rarely been of direct benefit to blind persons. Immediate action on, and passage of the Burke disability insurance bill would be consistent with the Congressional goal of putting Americans back to work; the bill being specifically addressed to the problems of the blind.

The over 50,000 members of the National Federation of the Blind and I would appreciate your talking with Congressman James A. Burke about his bill and your immediate co-sponsorship and support to get the full bill reported to the House floor and enactment into law. A number of NFB members and I will be in Washington early next week, and I look forward to talking this matter over with you at the 4:00 p.m. appointment, February 7th, as scheduled with your office. Thank you again, I am,

Very truly yours,

JONATHAN MAY,
First Vice President.

Mr. WAGGONER. Mr. Moffett, you can be assured we will do that. I am a cosponsor of H.R. 3049 and adhere in a very sincere way to the testimony you have offered, the thrust of which is that an earnings limitation should not be a barrier to work. An earnings limitation should not be a barrier to a blind individual who is fully productive and fully supportive of his own needs. You are advocating in some instances that benefits not be denied where the individual is gainfully employed. I adhere to that idea.

Are there questions from other members of the committee?

Mr. LEDERER. I would like to thank Congressman Moffett for a timely—just for the work he is doing. We appreciate it.

Mr. MOFFETT. Thank you.

Mr. SCHULZE. Your colleague from Connecticut, Mr. Dodd, made a good presentation along the same lines yesterday and we appreciate it.

Mr. WAGGONER. Two Members of the House have presented similar testimony this morning, Mr. Risenhoover of Oklahoma and Mr. Lehman of Florida had very much the same thing to say.

We thank you Mr. Moffett for your testimony. There is another vote. It is about time for the second bell so we will recess the committee pending our having voted.

[Brief recess.]

Mr. WAGGONER. Our next witness will be Helene Phillips.

We are happy to have you here this morning as the committee resumes its sitting. We will hear from you now on behalf of the Mountain Plains Congress of Senior Organizations. Your entire statement will appear in the record. You may proceed in your way. If you care to summarize, you may do so.

STATEMENT OF HELENE PHILLIPS, MOUNTAIN PLAINS CONGRESS OF SENIOR ORGANIZATIONS, DENVER, COLO.

Mrs. PHILLIPS. Honorable Chairman and members of the committee, my name is Helene Phillips from Winner, S. Dak. I am a semiretired professional nurse, a widow and today is my 66th birthday. I am very concerned about the status of social security which is a substantial part of my budget.

I am here to speak on behalf of the Mountain Plains Congress of Senior Organizations headquartered in Denver, Colo. The Mountain Plains Congress is a regional advocacy office for six States—Montana, Wyoming, Utah, Colorado, North and South Dakota.

In designing this testimony, we polled our regional and State boards, numerous senior groups in our area, and legislators in our region in addition to carefully studying President Carter's plan.

In our polling, one thing becomes very clear—many older people are very worried and frightened that the social security system may go broke. We need a system that older people can depend on. Steps must be taken soon to reassure all of us.

Now, before going any further, we feel that when reforming the social security program, we must look at and take into account the reasons why the fund is in trouble when seeking the solutions:

1. High unemployment—fewer workers and employers paying in.
2. A high rate of inflation—necessitating cost-of-living benefit increases.
3. Increase in the numbers and categories of persons claiming benefits and being included for coverage.
4. The long-term problem population changes means fewer working-age people and an increase in persons retiring.
5. A mistake (flaw) in the inflation adjustment clause.

Now, specifically regarding the President's proposals, we favor a temporary use of general funds to shore up the system while attempting to increase the work force so that more people are paying into the system. There is danger in the continued use of general funds for social security in that it may create a broad welfare plan with a stigma attached that would bother many older persons. If unemployment rises above 6 percent in the future, we would favor use of general funds on a case-by-case basis.

We favor a removal of the income earnings limitation to allow persons over 65 to earn any amount they are capable of earning, and collect the full amount of social security checks. This would contribute many dollars to the FICA fund. Most social security payments are inadequate to live upon, one would have several extra years to supplement their income and also some savings for future use.

Recent figures from the Social Security Administration show that at least 2 million elderly citizens are hurt by the earnings limitation.

Furthermore, this applies only to earnings and not interests, dividends or other pensions so it discriminates against and hurts the elderly who must work to survive.

I realize this is a controversial issue, however, I do not believe it would deprive the younger work force a job. Scan the advertisements for help wanted on any given day and you would find a large variety of jobs that are not filled. The 65-year-old age group and over are usually interested in part-time work, or are frequently hired for their expertise in a particular field. The younger worker has seldom gained the expertise and usually cannot afford to work the short hours.

We further favor the return of social security to strictly a retirement program as it was intended. Most older people really do feel this way. It does not mean we are unconcerned about others but a major reason for the drain on the fund has been the addition of other categories of persons to the program. We would favor a similar but separate fund or program for survivors and the disabled.

Social security is a very regressive tax. The majority of the very low income have more money in social security deducted from their incomes than they do Federal tax. We would recommend that social

security should be restructured to an upper income bracket and removed from the very poor. A way to do this is to initiate the social security tax at the \$2,000-\$3,000 income range and to raise it to \$18,000-\$20,000. That way a person making a meager income would pay tax but have a break, too.

President Carter has proposed suggested raising the employee taxable wage base to \$18,900 by 1985. We agree with this to generate additional funds.

We also feel the slight rise to the self-employed is necessary to bring this into equity.

Likewise, we support the gradual removal of the wage base ceiling for employers. However, some changes may be needed to accommodate small businesses. However, we do not feel we have expertise to comment further in this area.

The strengthening and expanding of private pensions will enhance the overall economic conditions for older citizens. To the extent possible, we recommend that private pensions reforms suggested by Ralph Nader be carried out and that the Carter administration carefully assess these areas.

And, finally, we agree that the flaw in the inflation adjustment clause should be corrected.

That concludes our comments on the President's proposal. However, we do have a few additional remarks on the system as a whole.

The social security appeals process is generally quite slow, especially for disability claims. The timelag is usually 6 months or longer; and often longer before a final decision is reached. We understand that this lag is even worse in other regions of the country. And while we realize this is not always the fault of the social security staff, we feel this timelag must be shortened as people truly worry and suffer a loss of needed income during this unduly long wait.

Surely with additional hearing officers and/or trying to enforce more accountability for the number of cases heard and judged per month, this problem could be corrected.

So whether the disabled remain under social security or not, certainly they are due this consideration.

In closing, I would add that Mountain Plains Congress of Senior Organizations does favor a national health insurance program for all. This would also help eliminate some of the drain on the social security fund by allowing those contributions for medicare (hospital trust) to go into the social security fund.

Thank you.

Mr. WAGGONER. Thank you, Mrs. Phillips.

Are there any questions from members of the committee?

Mr. ARCHER. No questions, Mr. Chairman.

Mr. WAGGONER. Mrs. Phillips, in giving an accounting of the reasons you feel the trust fund is in trouble, you listed five reasons; high unemployment, high rate of inflation, increasing number of categories of persons claiming benefits, long-term demographic changes and the flaw you referred to having to do with the inflation adjustment clause.

You did not comment on what could be the sixth reason, and that is indexing which we did in 1972. The Congress legislated indexing in 1972, providing cost of living increases. Do you feel that the stagnation

we have gone through coincided with indexing to aggravate the system?

Mrs. PHILLIPS. Well, it is my personal feeling that it has. In this particular instance, I would not venture to speak for the entire group of Mountain Plains.

Mr. WAGGONNER. I am not quite sure what you refer to when you say on a case-by-case basis. You would be willing to use general Treasury funds if unemployment exceeds 6 percent. What do you mean by a case-by-case basis?

Mrs. PHILLIPS. I think it is not stated as well as it should be. I think the intent should really have read that in periods of time when unemployment is around 6 percent or above that, there would be no harm in adding more money to social security from a general fund or some other fund, but it should not be a permanent thing. This should be at individual periods of time or special periods of time.

Mr. WAGGONNER. Secretary of Labor Marshall made a statement at the end of last week that he didn't visualize unemployment decreasing below 6.5 percent, and the trigger which they propose to provide for countercyclical funds is 6 percent. So it seems they are presenting a rather gloomy forecast for themselves.

Mrs. PHILLIPS. Well, maybe this figure should be raised. I don't know whether saying 7 percent would be particularly harmful or not. But I know that when the unemployment rate is high, there is certainly less money going into the fund.

Mr. WAGGONNER. You would not have access in your association, to the extent that others might have to some studies which have been done estimating the cost of the removal of the earnings limitation for workers between 65 and 72.

Mrs. PHILLIPS. No.

Mr. WAGGONNER. Just for your information because your people might be interested when you get back, Senator Goldwater came before the committee the other day and he is adamant about the removal of the earnings limitation. His recommendation, as is the case with others, is that the limitation be removed from 65 on, from 65 to 72, and he estimates the cost annually would be \$2.9 billion; isn't that correct, Mr. Kelley?

Mr. KELLEY. Yes.

Mr. WAGGONNER. We want to thank you, Mrs. Phillips, for your testimony here this morning. If the weather is somewhat like it is back in Mountain Plains, it doesn't happen too often.

Mrs. PHILLIPS. I understand.

Mr. WAGGONNER. Just to prove the age of chivalry isn't dead, I am going to the end of the list and call to the witness stand the American Federation of Government Employees, Ferne Cruz, who is the local president of the Dallas region.

STATEMENT OF FERNE CRUZ, PRESIDENT, LOCAL 3506, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, DALLAS, TEX., ACCOMPANIED BY TERRENTEL ROGERS

Mr. WAGGONNER. Being a neighbor from Louisiana, my southern chivalry has to have some small place in this hearing this morning.

Mr. ROGERS. Mr. Chairman, we thank the committee for holding these

hearings. Ferne and the American Federation of Government Employees are just real happy to be here to testify. She flew in from Dallas for the express purpose of appearing before this committee and we thank you.

Mr. WAGGONER. You may proceed.

Ms. CRUZ. Mr. Chairman, distinguished members of the subcommittee, my name is Ferne Cruz, and I am a hearing assistant employed by the Dallas Regional Office of the Bureau of Hearings and Appeals (BHA), Social Security Administration. I am also president of Local 3506, American Federation of Government Employees, AFL-CIO, which represents hearing office employees in the five-State region of New Mexico, Oklahoma, Texas, Arkansas, and Louisiana.

It is with a real sense of hope that I appear and testify today on the President's social security reform proposals. We welcome the attention of this subcommittee to recent problems which have developed in the overall administration of the social security disability claims program, and trust that any new legislation will reflect an understanding of the needs of the thousands of Federal employees who operate it on a day-to-day basis.

At the outset, let me briefly describe my position. When a case is received on the docket of an administrative law judge (ALJ), the hearing assistant prepares the files, determines the major issues in dispute, selects and summarizes the laws, selects and identifies the proposed exhibits, conducts prehearing and posthearing conferences with claimant and/or their attorneys, recommends and makes arrangements for the use of vocational expert witnesses and medical advisers, and summarizes and records the testimony during the hearing.

We work closely with the ALJ's, and as you can see, our duties are wide ranging. Because we are so closely involved with the hearing process, I would like to take this opportunity to discuss the serious administrative problems which have developed in recent years, problems which interfere with the efficient and effective operation of this program.

One of our major concerns as employees concerns proper position classification. The grades of GS-6, 7 and 8 for hearing assistants were established back in 1962, when only one title of the law was in effect. Since that time, the program has been greatly expanded; title IV, black lung; title XVIII, health care, and title XVI, supplemental security income, have all been added. In addition, the number of cases remanded from the Appeals Council and Federal district courts had greatly increased.

The result is that our duties and responsibilities, as well as the volume of work, have tripled. Despite this fact, we have not only had to accept, but even beg and plead for the original grades established back in 1962. We don't call this grade creeping, we call it triple creeping.

This may seem hard to believe, but I have been through no less than five desk audits now in the past 3 years, and it was only 2 months ago that I received the results of these audits. It appears as though someone is instigating repeated successful downgrading campaigns in the BHA, and we wonder why so much time, effort, and money is being wasted in this way.

The secretaries also face this same situation. They must be well versed in medical and legal terminology to work closely with a GS-15 APA administrative law judge, but we have had to struggle trying to justify a grade of GS-5 for them. They may be the only member of the unit left in the office "minding the store" while the judge and assistant are "on the road," sometimes gone for a period of 2 weeks at a time on the larger dockets.

A related problem concerns overlapping position descriptions, and the manner in which a large number of highly paid staff attorneys have been hired to do much of the work formerly done by the hearing assistants. Here I would like to refer you to a recent GAO report entitled "Problems and Progress in Holding Timelier Hearings for Disability Claimants," which took a very close look at this situation.

I happen to be one of those who were audited by a GAO team.

The report broke down the case-processing activities listed in the job descriptions for staff attorneys, hearing analysts, and hearing assistants, and concluded that the duties performed by these employees are to a great extent similar.

We have attached the portion of the GAO report dealing with this matter for the attention of the subcommittee. We would like to point out, however, that the position of staff attorney has been newly created in the name of increasing "productivity" and lowering administrative costs. The report clearly shows, however, that the hearing assistant has more "grade determining" duties than either the GS-11 hearing analyst or the GS-11/12 staff attorney.

In other words, a considerable number of highly paid attorneys have recently been hired to perform work that a competent GS-8 can perform. We strongly agree with the GAO report which concludes that:

Employees who have been hired for a specific job at a specified salary should be utilized according to their job description. This should result in a more efficient work flow and eliminate the waste of funds caused by using higher level employees for lower level tasks.

It is easy to guess what happens under these circumstances. Employee morale suffers, turnover increases, and administrative costs increase. Over the past 3 years, there has been a mass exodus of highly efficient and capable personnel from the BHA, and the field offices operate like revolving doors. If employees can easily go to another agency with more reasonable workloads and receive more money and appreciation, then they will do it.

There are still other administrative inefficiencies which have a negative impact on employee morale. There has been much attention given by a new agency management to the so-called backlog of cases which needs to be eliminated. We wonder about the size of this backlog for several reasons. First, many ALJ's have found it difficult to get out-of-service or out-of-region dockets assigned, which indicates to us that the case load backlog could not be enormous.

Second, if an out-of-region docket were assigned, then it took the central office from 4 to 6 weeks to make a decision whether an ALJ's regular hearing assistant would also work the 2 week out-of-region docket. On many occasions, the assistant would be notified as late as Friday afternoon that she would be leaving Sunday on a 2-week trip

to a high-cost area. Obtaining a travel advance at that late hour is virtually impossible. Aside from the fact that there are home duties to make arrangements for, discount airline fares cannot be obtained on such short notice.

Even though we have recently observed a large increase in the number of high-grade nonhearing bureau personnel, mostly in the management area, they seem to spend most of their time issuing new reports and directives. We are still experiencing unnecessary delays in the regional offices with the processing of our travel vouchers, as well as paperwork pertaining to personnel and pay.

The slipshod administrative practices we have identified above create real hardships for dedicated Federal employees, and we fail to see how such policies will contribute to increased productivity or more effective program operation.

In short, we are concerned that these personnel and administrative problems can interfere with the objectives of the subcommittee in its worthy objective in reforming the social security disability insurance system.

This concludes my testimony, and I would be most happy to answer any questions or furnish material you may need in the exercise of your oversight responsibilities.

Mr. WAGGONNER. Thank you, ma'am, for your testimony.

I guess I really should have known that we had something of interest mutually—we were born in Louisiana.

Are there questions from members of the committee?

Mr. Archer will inquire.

Mr. ARCHER. Ms. Cruz, I notice that you have included two extra sheets, Nos. 22 and 23. Do you just wish to have those in the record, or do you wish to comment on those while you are here?

Ms. CRUZ. I would like to have those in the record.

Mr. WAGGONNER. Without objection, they will be included in their entirety.

[The material follows:]

[Excerpt from GAO report entitled "Problems and Progress in Holding Timelier Hearings for Disability Claimants".]

* * * * *

INEFFICIENT USE OF STAFF

Hearing personnel are not utilized by ALJ's as efficiently and effectively as possible. In addition, job descriptions do not clearly differentiate the duties of personnel at different levels of responsibility but overlap in many respects. As a result, staff members at different levels of responsibility and pay can carry out many of the same activities.

In addition to a basic staff which consists of a hearing assistant and secretary, some ALJ's have an additional hearing assistant, secretary, staff attorney, or typist, or some combination of these. The main function of the hearing assistant is to prepare a case for hearing under the supervision of the ALJ. This includes identifying issues, obtaining evidence, and selecting exhibits. The function of the staff attorneys, who are higher-salaried employees than the hearing assistants, is to conduct legal research and assist ALJ's in writing decisions.

Aside from the ALJ's staff, development centers, which prepare SSI and concurrent cases, are staffed with hearing analysts. Their responsibilities are similar to those of the hearing assistant, but their salary level is generally the same as a staff attorney's.

In practice the duties performed by hearing assistants, hearing analysts, and staff attorneys are similar. Because each ALJ has developed individual work methods, each utilizes staff members in his or her own way. Further, the ALJ,

rather than simply review his or her staff members' performance, may perform some of the duties assigned to staff members by their job descriptions. The following chart illustrates some case processing activities which are listed in the job descriptions of these employees.

Activity	Assigned to and performed by		
	Staff attorney	Hearing assistant	Hearing analyst
Identifies problems and defines issues.....	X	X	X
Analyzes evidence.....	X	X	X
Assures prior determinations were properly carried out.....		X	X
Compiles information into logical presentation.....		X	X
Summarizes facts.....	X	X	X
Prepares exhibit list.....		X	X
Obtains additional evidence.....	X	X	X
Prepares replies to inquiries.....	X	X	X
Conducts prehearing conferences with claimants.....	X	X	

To eliminate such overlapping of responsibilities, job descriptions should be revised. Employees who have been hired for a specific job at a specified salary should be utilized according to their job descriptions. This should result in a more efficient work flow and eliminate the waste of funds caused by using higher level employees for lower level tasks.

To illustrate, presently in some hearing units the staff attorney is responsible for identifying issues, obtaining evidence, and selecting exhibits; this results in the hearing assistant performing many secretarial tasks. In some units without staff attorneys, ALJ's review the claim to identify issues and determine what further evidence is needed. In such units, in which staff attorneys or ALJ's perform duties which hearing assistants are capable of performing, the skills of the higher-level personnel are not being utilized efficiently. Generally, the hearing assistants with whom we spoke believed that they could be of more assistance to the hearing unit, particularly if they had fewer secretarial duties.

Mr. ARCHER. We naturally are very concerned about the same things that occupy your interest and that is the morale of the personnel within the Social Security Administration, with the turnover and the administrative costs. All of that is tied together.

What case backlog do you have? You questioned how much backlog really exists in the decisionmaking process. What backlogs exist in your region?

Ms. CRUZ. Mr. Archer, we recently have permission to obtain at least 100 cases out of the Alexandria, La., office, which is on a regional basis. I just returned from a 66-case docket in Detroit. We have been to Boston; we have been to Vermont; we have been all over the country.

When we find the cases, we go and hear them.

Mr. ARCHER. There apparently is not such an overwhelming demand in your immediate area, and you have personnel that can go to other areas that have a greater demand; is that correct?

Ms. CRUZ. Correct.

Mr. ARCHER. I am not trying to put words in your mouth, but I am trying to get some facts for the record here. Is it fair to say that in your immediate area that you do not see this backlog which has been cited to us many times by the Social Security Administration?

Ms. CRUZ. No, sir, we do not. We question where the backlog comes from. For example, we received three cases in which many times three requests for hearing come in to be considered. We handle this through one oral hearing and obtain testimony to handle all three cases. But our judges are allowed to count this as one case going out.

In other words, we received three in and one goes out.

Mr. ARCHER. You apparently do not feel the available personnel are being used efficiently to take care of the areas where there might be a backlog; is that a fair statement or not?

Ms. CRUZ. I would say that that is a fair statement.

Mr. ARCHER. They could use the personnel more efficiently for better planning?

Ms. CRUZ. Yes.

Mr. ARCHER. You also mentioned duplication between the hearing assistants and the staff attorneys that have been brought into the picture to a greater extent lately. Do you think there is any need for staff attorneys?

Ms. CRUZ. I do not.

Mr. ARCHER. You don't feel they perform any real constructive role in the hearing process that could not be handled without that additional personnel; is that a fair statement?

Ms. CRUZ. I believe that is a fair statement. In fact, we do not have a staff attorney in our unit at present. Our production has not decreased at all. I think that a study of this would prove that judges without staff attorneys assigned continue efficiently.

Mr. ARCHER. Do you have any other specific suggestions that you would like to make to us in order to streamline and make more efficient the system, to utilize the personnel better, to create better morale and reduce turnover. We are not asking you to spend a lot of time now orally; the committee would welcome those comments in writing and we would be pleased to receive them at any time.

Ms. CRUZ. May we do so?

[Additional comments had not been received at time of printing.]

Mr. WAGGONNER. Mr. Schulze?

Mr. SCHULZE. I would like to thank the witness for very good testimony. You have given us many problems to contemplate. Perhaps we can come to some solutions.

Mr. WAGGONNER. Here in the room is a man from Social Security, one of the really knowledgeable men in the system, perhaps as knowledgeable as anybody who is in the Office of Program Evaluation, and it just might be that he will go back to Baltimore and tell them about your suggestions. He is Mr. John Snee, who just happens to be here.

You know, you could not see him, but I think he was listening to you.

Thank you so very much for your testimony.

We will hear now from Mr. Charles Stewart, president of the Machinery & Allied Products Institute.

STATEMENT OF CHARLES W. STEWART, PRESIDENT, MACHINERY & ALLIED PRODUCTS INSTITUTE, ACCOMPANIED BY DONN R. MARSTON, STAFF COUNSEL

Mr. WAGGONNER. Your entire statement will appear in the record.

Mr. STEWART. I am Charles Stewart, president of the Machinery & Allied Products Institute, and I am accompanied by our staff counsel, Mr. Donn Marston who has done extensive work in the social security area.

Mr. WAGGONNER. If I remember correctly, the last time you were before us, you were talking about investment credit, weren't you?

Mr. STEWART. That is right, sir.

Mr. WAGGONNER. We welcome you again and I won't interrupt anymore.

Mr. STEWART. First, I think you have had many expert witnesses, with some difference of opinion before this committee. If I can make a contribution, perhaps introduction of a little perspective might be useful.

First of all, you mentioned our statement in its entirety being included in the record and I trust that also includes the attachment thereto.

Mr. WAGGONNER. Without objection, it will.

Mr. STEWART. It is entitled "Social Security, the Financial Crisis in Perspective," which we published in March of 1977.

Interestingly, and without any wish to burden the record with a further document, in 1967, if we may take a little credit for anticipation, MAPI published a document called "Social Security and Private Pensions at the Crossroads: Crisis or Compromise." That document was intended preliminarily to point to the fact that companies and individuals can only spend 1 dollar once. The central point we were emphasizing in that pamphlet and emphasizing again in the statements that we have presented to this subcommittee or the full committee is that there is a serious problem arising in terms of the preemption of private pension plans to some degree as a result of the growth of the social security system and the cost of that system, particularly to corporations.

We think this is a serious matter of broad policy which is not given sufficient attention. That trend which we foresaw in 1967 is continuing. When you combine that with the impact of ERISA, about which you have all heard a great deal, this triggers cancellation of a significant number of private pension plans. This is a very important overall issue to which the Congress should address itself in our judgment.

We have already gone too far down the road away from the private pension system.

Now, I want to cover also a perspective point which I believe is, to some extent, overlooked, partly due to the fact that it is very difficult for the procedures of the Congress to put all the pieces together in terms of tax policy. We feel very strongly that in addition to being a social security system which is gradually moving away from its original concept of being an earned-benefit approach, social security is a tax system, and we should never fail to recognize that those taxes have an impact.

What I have been trying to emphasize before the Congress, is to say that we are at a very difficult stage where we are considering an energy bill which is at least half a tax bill, when we are considering social security, which has an inherent and important tax aspect, when we are considering piecemeal such things as the House Ways and Means Committee's withdrawal of the deduction for State gas taxes, things are being done in a piecemeal fashion without being related to the overall tax picture to which the Congress is addressing itself. And we are hearing trial balloons from the Secretary of the Treasury about what might be in tax reform proposals.

I think it is critical that the Congress do the best that it can and for the executive branch to do the best that it can to put these pieces together to the extent that they all impact or interact in terms of a total tax policy.

Now, relating to those general comments, let's take a look at certain tax aspects of the legislation that is before you. Under the proposal of the administration, we would move over a 4-year period to complete removal of the ceiling on salaries which provides the base for the application of the social security tax. The press this morning carries the story that Senator Long has expressed some interest in that proposition to the extent of having it done not on a phased-in basis, but having it done at once.

Now, what is involved in money is approximately \$30 billion as far as corporations are concerned.

Mr. ARCHER. May I interrupt you for a moment there? When you say corporations, are you also including individual proprietorships or are you exclusively talking about corporations?

Mr. STEWART. Including individual proprietorships.

At the same time, we are talking about tax reform which hopefully will be primarily affirmative as well as to some degree negative in its impact, and we are talking about removing over a period of 4 years—or in 1 year from the corporations and individual proprietorships \$30 billion. I have heard it said that a social security increase is passed through to the individual in prices. I have two comments on that observation.

First of all, you have to pass through as many costs as you can if you are in business and you want to be in the black. But the market determines whether or not you can pass through, or at least affects timing.

Furthermore, I don't think it is politically desirable to say that we should not worry about \$30 billion, because it can be passed through. I think that argument is likely to die as we progress through the legislative process.

What I am trying to emphasize is that we should not deal with social security in a vacuum. We should place it along side all other tax aspects, tax reform, et cetera. We strongly oppose both in the broad context that I have tried to lay out and in a narrower context this notion of removing the ceiling on the salary base either at once or gradually as a part of the social security system.

Now, just a few comments about the detail of our statement.

You will note the statement summarized twice, so there would be no point in going through it all the way. We are very much concerned about a further abandonment of the earned benefit concept. We are also very much concerned, as I have indicated already, about tapping the general revenues, at any juncture, for funds to support the social security system which would have two effects.

First, we think it is wrong in principle and it would be opening a door and we would never stop.

Second, it will remove from the corporate revenues funds that would be otherwise available for sound tax reform and other actions.

If the Congress, in its wisdom, should want in an emergency situation to have available the general funds, it could be done in somewhat the same way that unemployment compensation at the State level

is handled. Namely, as we understand it, when the State-level unemployment compensation funds run out, the State borrows from the U.S. Government but with an irrevocable obligation to pay it back.

So, we really are concerned about the tapping of general revenues and strongly oppose it. But if at any time the Congress should pass some sort of a relief-value mechanism affecting the general revenues, then there ought to be an irrevocable obligation that the general revenues be reimbursed.

There has been a good deal said about the dilution of the reserve as far as the social security system is concerned.

I think the concern there is overstated because the reserve is bound to run off when you are in a serious recession. I have seen figures recently which I can't recall in detail that that reserve is now building up very well as the economy has gone into a growth position. So the reserve really functioned the way it was supposed to function, and we don't feel that you have a crisis insofar as the reserve is concerned.

We want to register a concern about indexing social security benefits. At this time we don't come before you with a recommendation that indexing be ruled out completely. But I think that the merry-go-round that we are on in social security, as to military employees, in the civil service, to a lesser extent in local government workers, but without similar assistance to a large part of the population that doesn't benefit from any indexing, there is an element of inequity and it also may be a kind of self-defeating proposition because inflation feeds on inflation.

I think there is bipartisan support both in business and in government for decoupling. Obviously, this was a matter of an error. You can, however, go further in examining decoupling as we recommended in our statement.

To move to another point, we don't think that in the present period there is anything magic about the retirement age or the early retirement age in social security. Why can't it be 68 and 65 which matches the data that we see and would also save money as far as the social security system is concerned?

I will close by emphasizing those things which we think the committee or the subcommittee should reject. We have already emphasized that we oppose this so-called countercyclical payment from general revenues. We oppose removal of the ceiling on the amount of an individuals' wages or salary on which the employer pays social security taxes. We oppose an increase in the amount of the wage base.

We favor an increase in the tax if it is needed. We suggest an amount. We can't back it with technical actuarial data but we think the figure is about right.

These views flow from the following convictions: Any action taken by the Congress should preserve the basic elements of the present system—mainly the concepts of the "relationship between benefits and earnings" and the "relationship between the right to benefits and the performance of work."

Since the public system is not indetical in scope, philosophy, or purpose with the private system, and only a part of the population is covered by supplementary private pensions, it may not be possible to balance the two so as to provide perfect complementary programs; however, Congress now has the opportunity in reviewing the financing situation to take a giant step in this direction.

In selecting solutions, Congress must view the social security system in the full context of the system's welfare aspects, its lack of universality and the total tax burden carried by families and employers. In short, bandaid solutions can only worsen a longrun problem.

Finally, a general overall appraisal—I think too much of a sense of absolute crisis is influencing thinking and suggestions in the social security area. If you were to raise the rate for both employers and employees—not too high—but were to raise it, if you decouple to the extent proposed, and I think agreed upon by everyone, and do certain other things that we referred to that are of a lesser nature, at least for a period of years where further study could be given to the long-run problems, you would eliminate any immediate crisis situation.

We did suggest one other thing in terms of borrowing, and that is that there ought to be authority for borrowing among the various funds that we are dealing with here.

I think I should stop at this point in deference to your time schedule. I hope that we have made some contribution in trying to put this in total perspective as distinguished from just looking narrowly at points 1, 2, 3, and 4.

[The prepared statement and attachment follow:]

STATEMENT OF THE MACHINERY AND ALLIED PRODUCTS INSTITUTE PRESENTED BY
MAPI PRESIDENT, CHARLES W. STEWART

The Machinery and Allied Products Institute welcomes this opportunity to express its views regarding the Administration's social security proposals to solve the short- and long-run financial problems of the system. The Institute's membership is vitally concerned with the issues and believes a thorough review of the problems to be of critical national importance.

Before proceeding to an examination of some of the key issues, two general observations are in order. First, as representatives of the capital goods and allied product industries, we have always taken what we feel has been understandable pride in the leadership role played by the manufacturing sector of the economy in the establishment and development of the private pension plan system. As our statement brings out more fully, we believe only a vigorous and imaginative effort on the part of industry and government can achieve the goal of the proper growth and development of the private and public systems, both of which are vital to our present approach of providing for the needs of the older population of this nation. We think the most careful scrutiny of the interaction between social security and the private pension system is long overdue¹ and we approach the financing issues before this Subcommittee with this in mind.

Second, social security is and should continue to be an independent program. However, its financial impact cannot be reviewed in a vacuum. Social security financing must be considered together with all other tax recommendations of the Administration and Congress. The most notable examples are, of course, the tax provisions of the Administration's energy program now before Congress and the "tax reform" package to be submitted presently. Not to do so would be irresponsible because of the severe impact of social security taxes.

A SUMMARY OF OUR POSITION

The Administration has proposed an eight-point program designed to provide both short- and long-run financial solutions to the social security system. As just indicated, we urge that Congress review social security financing as a part of the total tax picture including all other tax recommendations so that the full impact of the program becomes clear. Specifically, we recommend that Congress take the following steps to alleviate the financial problems of social security:

¹ "Social Security—The 'Financial Crisis' in Perspective," Machinery and Allied Products Institute, March 1977. (A copy of this pamphlet is attached for the record.) Also see "Social Security and Private Pensions at the Crossroads: Crisis or Compromise," MAPI, May 1967.

1. Amend the Act to permit borrowing among the funds with the proviso that there be an unqualified obligation to repay. Although in general we oppose tapping general revenues for social security financing, if some authorization for this action is approved it should be limited to emergency conditions with an unqualified requirement to repay the Treasury.

2. Elimination of the "progressivity" of the current benefit formula; overhaul the spouse's benefit provisions; and remove the minimum benefit.

3. Add an "annual earnings" test to determine entitlement to retirement benefits.

4. Move toward establishment of universal coverage of the system.

5. Reform and improve the administration of the preretirement and disability programs.

6. Change the retirement ages, with regular retirement set at age 68 and "early" retirement at age 65.

7. Enact a tax increase of 0.5 percent for employers and employees each in 1978.

8. Provide realistic statutory "integration" rules for private plans, including the adoption of incentives to encourage the growth of the private system.

9. Increase the tax rate on the self-employed from 7 percent to 7½ percent.

10. Change the test of whether an individual may claim benefits as a dependent.

11. "Decouple" the social security benefit formula to eliminate the overadjustment for inflation now in the law.

12. Advance the 1 percent increase in the OASDI tax rate which is scheduled to go into effect in 2011.

We also urge the Subcommittee and Congress to reject the following solutions:

1. Provisions for a special "counter-cyclical" payment from general revenues.

2. Removal of the ceiling on the amount of an individual's wage or salary on which the employer pays social security taxes.

3. An increase in the amount of the wage base subject to the employee tax, beyond the automatic increases in the current law.

4. A shift of revenue from the HI Trust Fund to OASDI Trust Funds.

In brief, these views flow from the following convictions:

Any action taken by the Congress should preserve the basic elements of the present system—mainly, the concepts of the "relationship between benefits and earnings" and the "relationship between the right to benefits and the performance of work."

Since the public system is not identical in scope, philosophy, or purpose with the private system and only a part of the population is covered by supplementary private pensions, it may not be possible to balance the two so as to provide perfectly complementary programs; however, Congress now has the opportunity in reviewing the financing solutions to take a giant step in this direction.

In selecting solutions, Congress must view the social security system in the full context of: the system's welfare aspects, its lack of universality, and the total tax burden carried by families and employers. In short, "band-aid" solutions can only worsen the long-run problems.

Our statement begins with a look at where the system is now and the identifiable problems. Following this, we review the Administration's proposals against the backdrop of the alternatives facing Congress. Finally, we conclude with some specific recommendations.

SOME PERSPECTIVE

The growth of the social security program in recent years has been staggering. Between 1966 and 1977 total benefit payments have risen from roughly \$20 billion to over \$90 billion, more than a 400 percent increase. Even after adjustment for inflation, benefit payments doubled in this decade.

In 1966, employers and employees paid a combined tax of 8.4 percent on the first \$6,600 of wages; by 1976, the combined tax had increased to 11.7 percent of the first \$15,300. Under present law, in 1978 the combined tax will jump to 12.1 percent on an anticipated maximum taxable wage base of \$17,700. By 1978, the maximum tax levied on a covered worker will have climbed from \$277 in 1966 to \$1,070, about a fourfold increase.

The future tax picture is equally bleak. Even with the 1978 tax rate increase and anticipated annual increases in the maximum taxable wage base, the 1977 Trustees' Reports indicate the Disability Insurance Trust Fund will be exhausted in 1979, the Old-Age and Survivors Insurance Trust Fund in 1983, and the Hospital Insurance Trust Fund in the late 1980s. Thus, an even heavier tax burden

seems inevitable to meet rapidly rising benefit payments now estimated to be over \$150 billion by 1981.

There are, of course, only four sources for additional financing for the system. The first is an increase in the tax rates. A second approach is to increase the maximum taxable earnings base to a greater extent than the automatic-adjustment provisions would bring about. A third avenue is to inject a government subsidy into the social security system from the general revenues. The fourth approach is to cut benefits or benefit expectations.

The Administration has presented Congress with a package which to one degree or another employs all four of the methods of financing. Unfortunately, this kind of eclectic solution will bring with it a number of perversities for the system. To explain, we turn first to the introduction of significant general revenues to pay for the burgeoning costs.

GENERAL REVENUES—THE ABANDONMENT OF THE "EARNED INCOME" CONCEPT

The Administration has proposed that a "new counter-cyclical financing mechanism" be established to feed general revenues into the OASDI and HI Trust Funds. The basic concept is that an amount of money equal to the difference between payroll taxes that were actually paid and those that would have been collected for the year if unemployment had been no more than 6 percent would be transferred from general revenues to the social security trust funds. Under the proposal, the transfers would cover the taxes that have been lost because of high levels of unemployment that began in 1975. While the transfers would actually be made in 1978, 1979, and 1980, they would reflect revenue shortfalls of the years 1975-78. The mechanism would be temporary, ending with the 1980 transfer unless renewed by Congress.

"Earned income concept."—There are, of course, no excess general revenues available. Thus, this kind of federal revenue financing will hold up other new programs, including tax reduction, by extending the deficit. Frankly, once the funding from general revenues is started in any significant way, we doubt Congress will be able to stop the flow.

Further, the proposal raises a very fundamental question in connection with the future of social security financing. Simply put, of great importance to this system as it exists today are the relationship between benefits and earnings and the relationship between the right to benefits and the performance of work. The payroll tax is an essential part of the earned-benefit approach because this kind of contribution tax is more directly tied to employment than any other.

To expand on this issue, social security is best viewed as a device to force people to save during their working years to ensure adequate income in retirement. Within the lifetime framework, where taxes and benefits are considered jointly, the payroll tax is the appropriate method of financing a compulsory savings program.

Arguments to the contrary tend to dwell on the many non-wage related benefits of the system, such as the minimum benefit, the dependents' benefits, and the progressive benefit formula. Critics of the payroll system argue the system should be viewed as an expenditure program in an overall income maintenance system. Thus, the payroll tax would be evaluated in relation to other taxes, not to benefits.

Yet in so arguing for the introduction of general revenue financing, such proponents overlook, or at least underestimate, the following considerations:

1. The contributory financing payroll tax system allows workers to receive benefits as an earned right rather than as a dole.
2. A fixed source of income protects the system from the uncertainties of annual appropriations and, in the case of the Administration's proposals, the uncertainties as to economic projections regarding unemployment.
3. Indirect financing on the theory that social security is in significant part an income maintenance program begs the introduction of a means test because it is inefficient to provide income maintenance to those who do not need it.
4. General revenue financing—even if only in part—will place the system in competition with all other government programs for such funds.
5. Finally, the introduction of the concept (other than to finance benefits in special cases as is currently done) will inevitably lead to an increased reliance on such financing with accompanying pressure for increasing income taxes.

Overlooking the current "offsets."—At the present time, unemployment is heavily subsidized. The Administration would add to this subsidy by means of its "counter-cyclical financing mechanism" for social security. This approach, if

adopted on a permanent basis, would bring with it a number of inconsistencies. For example, if during the course of a recession it were deemed appropriate to have a "stimulative" fiscal policy, this previously established policy would be counterproductive. It would tend to defeat the very purpose of an adequate reserve in the trust funds.

Beyond this, moving to general revenue financing overlooks the fact that Congress has already taken steps to ease the burden of low-income taxpayers and beneficiaries under the system. Specifically, the earned income credit introduced in 1975 goes a long way toward eliminating the burden of the payroll tax on the working poor. This is, of course, a limited device, i.e., the credit is extended only to taxpayers with children and provides no relief for low-income childless couples or single people. Its existence, however, coupled with the fact that the tax relief it provides occurs outside the social security system permits it to function as a strictly wage-related system and still be equitable.

As for low-income beneficiaries, Congress in 1972 created the supplemental security income (SSI) program to replace the old network of state programs providing for the needy, aged, disabled, and blind. Under SSI, which is administered by the Social Security Administration and fully financed from general revenues, benefit levels, eligibility conditions, and means tests are uniform nationwide. The SSI program is more than a revamping of existing public assistance programs; it is a federal minimum income guarantee serving as a floor for those on social security. Its very existence lessens the need for the welfare aspects of social security benefits, including the progressive benefit formula.

In sum, we already have committed significant general revenues to programs outside the social security system which are indeed complementary to the system itself. To introduce general revenues in another way appears totally unnecessary and dangerous.

TRUST FUND LEVELS

Another "virtue" of the countercyclical financing mechanism claimed by the Administration is that the necessary reserve level—presumably one able to withstand a serious recession—can be dropped from the desired 50 percent of annual outlays to 35 percent. At first blush, this is an appealing feature of this proposed financing mechanism.

On the other hand, it may be possible to drop the reserve below 50 percent to something around 35 percent without so drastic a step as the introduction of general revenue financing. Specifically, the law could be amended to permit borrowing among the funds. Thus, there need be no fear that the Disability Insurance Trust Fund would be exhausted in 1979 when it is evident that there are still adequate funds in the Old-Age and Survivors Insurance and Hospital Insurance Trust Funds. While this is not a long-run solution, it would provide needed flexibility and is in effect recommended by the Administration—at least on a one-time basis.

As to the argument that using general revenues averts the necessity of raising social security taxes during a recession, still another safeguard could be added to obviate that need. Although, as a general principle, we strongly oppose using general revenues to fund social security even in part, the law could be amended to provide that funds from general revenues could be loaned to the social security system in the event of a threatened depletion of funds under emergency conditions and with an unqualified obligation to repay. This could be established as an arm's-length transaction at prevailing interest rates. We make this suggestion with some trepidation because this type of financing could become a back-door to general revenue financing which we strongly oppose as we have stated. This approach would give Congress still another option assuming the timing was wrong for a tax increase.

As to the absolute minimum level of reserves appropriate, a study should be conducted of our most recent recession experience. Most economists agree that the recession of 1973-75 was the worst since the depression of the '30s and that we are unlikely in the future to suffer any recession more severe. Looking at the 1977 OASDI Trustees' Report, it appears that the drop in assets on hand at the beginning of the year stated as a percentage of expenditures during the year was 36 percent from 1972 to 1976. Accordingly, a reserve of 40 percent would appear to be adequate to withstand another such recession, assuming, of course, that the structural defects currently in the system now aggravating the reserve run-off problem are corrected. At any rate, a full study might reveal that the levels of reserves previously thought to be necessary are not required in light of the actual 1973-75 recession experience.

LOWERING BENEFIT EXPECTATIONS—A LONGRUN SOLUTION

As the Administration points out, the current social security benefit structure requires immediate attention because the automatic price adjustments introduced in 1972 contain a flaw. Under the 1972 changes, whenever benefits for those already on the rolls are increased to keep pace with the cost of living, the wage replacement factors are increased by the same percentage. The purpose of this change is to assure that every future retiree who has the same average lifetime wage as a current retiree will receive the same benefit. The adjustment of indexing, however, fails to take into account the fact that average lifetime earnings covered by the system are also rising and, therefore, the benefit formula is actually overadjusted.

All appear agreed that a correction must be made and promptly. The Administration's proposal for correcting this flaw called "decoupling" includes (1) close to a 45 percent fixed replacement formula; and (2) wage-indexing the earnings history.

Unfortunately, the Administration has not gone far enough in its "decoupling" proposal because decoupling in the broad view involves: the "progressivity" of the current benefit formula; spouse's benefits; and the minimum benefit. In short, Congress in approaching "decoupling" has the opportunity to reexamine in full the benefit promise under social security and whether it seizes upon the opportunity or not will implicitly or explicitly be establishing policy in these areas.

Eliminating "progressivity."—To explain, under virtually all "decoupling approaches, the new system would have stable replacement rates and these rates will alter the pattern of benefits paid to future retirees. Thus, a first issue becomes how progressive should the benefit formula be. Currently the formula is structured so that the benefits of low-wage workers are a higher proportion of their preretirement earnings than those of high-wage workers. As part of a decoupling scheme, it would be possible to design a benefit formula that closely duplicates the existing structure. On the other hand, Congress could eliminate—or at least adjust—this progressivity which has evolved gradually over time.

With the existence of SSI, Congress should look at the alternative of providing proportional benefits to all retirees. This tack would separate the goals of earnings replacement and income maintenance into two programs. The earnings replacement function would be performed by social security—a strictly wage-related system—while the income support function would be transferred to SSI.

There would be many pluses to providing strictly proportional benefits to all retirees. Among these are the following:

1. The current progressive benefit structure carries with it a high cost and this cost—to the extent Congress deems it appropriate—could be transferred to general revenues within the structure of existing programs.
2. Social security benefits would be strictly related to past contributions and therefore appropriately financed by the payroll tax.
3. A proportional social security benefit approach would ensure that all future workers receive an equitable return on their contributions.
4. A proportional benefit structure would be more nearly parallel to the private system making "fair" integration with the public system more feasible and easier to administer. (It is the progressive nature of the current system that in large part makes it possible for lower paid employees to achieve a pension in excess of final earnings when the benefits of an unintegrated private plan and social security are combined.)

The spouse's benefit.—Another issue in terms of a future benefit structure is the benefits for aged spouses. Under the current program—designed on the basis of the presumed dependency of a married woman on the male head of the household—a number of inequities are created by the fact that the tax is levied on the individual but the benefit is awarded to the family. Specifically, a married worker receives an additional 50 percent of the primary benefit for the support of his spouse, raising his wage replacement rate and giving him more benefits for his payroll tax dollar.

Given a proportional benefit structure, it is probably easier to design a solution to the spouse's benefit inequity. For example, to maintain a 50 percent add-on, nonworking spouses might be given the option of contributing a "tax" equal to the tax for one-half of the income the spouse earns that is covered by social security.

At the same time, since more and more spouses are working, new averaging rules could be created. At the minimum, Congress should recognize that the issue goes beyond one of equitable treatment. The current spouse benefit is simply

irrational under any kind of earned benefit system and in some respects is inefficient for an income maintenance system since it is typically the higher income workers who gain most under the current system.

Minimum benefits.—As with the case of the progressive benefit formula, the minimum benefit provisions under social security are at the heart of the progressive nature of the social security benefit scheme. It seems obvious that these benefits duplicate the SSI program and cannot be justified under an earned income benefit program. Beyond this, minimum benefits are a part of the problem called "double-dipping." Under the current system, workers entitled to other major pensions, such as federal civil service retirement benefits, can easily achieve insured status under social security and receive at least the minimum benefit in addition to their regular pensions. In sum, in addressing "decoupling" attention should be given to the issue of minimum benefits as well.

The "technical" issues.—"Decoupling" is a long-term solution to the financing problems of the social security system. It is, however, far from being a simplistic cure because it requires resolution—as noted above—of a number of fundamental issues about the nature of the social security program. We would urge that each such issue be taken up by Congress and specifically dealt with.

Benefit levels.—Beyond the fundamental issues, "decoupling" also involves a number of technical issues. A key one is the appropriate benefit level. The Administration's proposal—which is similar to the one proposed by the Ford Administration in June 1976—would set the initial average benefit close to present law in 1979. A proposal by the American Council of Life Insurance would set the average benefit close to 10 percent below present law in 1979 or, in effect, at roughly the 1972 level. Perhaps a compromise between these approaches would be the most appropriate.

Wage or price indexing.—The proposals noted above would wage index the workers' earning records as the quid pro for freezing the replacement factor for three categories of earners. These approaches would also wage index these newly introduced benefit formula bend points. Once the initial benefit amount for an individual was determined, subsequent increases in the monthly benefit would depend on the CPI.

There is also merit in the approach which would index the earnings history by price. Since prices over a long period of time have not risen as rapidly as wages, the relationship of benefits to final wages declines continuously over time. Thus, all other things being equal, price-indexing develops more savings, and it could be employed to eliminate the entire deficit by itself.

The problem, however, is that price-indexing would produce slowly declining replacement rates. Those who argue for price-indexing contend in this regard that adjustments can be made later by future Congresses whenever they believe it to be necessary. In our view, while we recognize the merits of price-indexing, it is less acceptable than wage-indexing because of the implied need for congressional action to periodically boost benefits. This latter situation might well carry us back to the pre-1972 days when Congress felt compelled to raise benefits before every election—or so it seemed.

Other technical problems that have to be wrestled with include :

1. The need for a transition period to phase-in the decoupled system. In our view, a transition period is obligatory.
2. Whether or not the lifetime earnings concept should be modified. We believe the lifetime earnings concept should be kept because it fits with a wage-related annuity program as the appropriate base on which to award benefits.

Concluding comment.—"Decoupling" is essential and Congress should move as rapidly as possible to accomplish this change. At the same time, it does raise fundamental questions regarding the system and it is equally important that Congress come to grips with these basic issues.

As we view decoupling, it presents Congress with an opportunity to put the system firmly on a wage-related track. If this is done, the Congress will have taken a giant stride toward making the private and public systems compatible. Once the two systems become more "synchronized," this should provide a needed incentive to the growth of private programs which in turn will lessen the pressure for expansion of the public system.

OTHER BENEFIT DECREASES

Change in test for beneficiaries.—The Administration's proposal would narrow eligibility for dependent's benefits, limiting it to whichever spouse had the lower income over the preceding three-year period. This proposal is designed to mitigate

against the Supreme Court decisions which in effect permit any husband to claim dependent's benefits, regardless of his actual previous dependency on his wife's earnings. We think this would be a meritorious change.

Other changes.—The Report of the Advisory Council on Social Security in March 1975 made a number of suggestions which should be reviewed during this current process. Among others, the Council suggested:

1. The provision of the retirement test under which a full benefit may be paid for any month in which a beneficiary earns less than one-twelfth of the annual exempt amount should be eliminated, and replaced with one based strictly on annual earnings. This would eliminate payment of benefits to those persons who are able to channel their yearly earnings into a few months and establish benefit eligibility for the rest of the year.

2. The minimum benefit should be frozen at a specified level and benefits should not exceed 100 percent of the earnings on which the benefit is based. This is aimed at workers who are eligible for retirement benefits under both social security and other retirement programs (for noncovered employment). It is viewed as a windfall to those individuals because benefits they will receive are out of proportion to what they contribute.

In this regard, we have noted above that decoupling provides an opportunity to remove the minimum benefit altogether. The Advisory Council recommendation would appear to be a welcome interim step until the complete removal is accomplished.

3. Make universal coverage compulsory. This would expand coverage to those with earnings not now covered—mainly from public employment. It is the Council's view that such a change would eliminate unwarranted duplication of benefits. It would, of course, greatly improve the financing outlook, at least for the shorter run.

This proposal is of course fraught with difficulties, including legal restraints. On the other hand, it makes a lot of sense if viewed in the context of other changes which would move the system to a "pure" wage-related program. Once this is accomplished, it would be easier to design complementary state and federal programs if Congress deemed it appropriate to mandate universal coverage by social security.

Currently, "double-dipping" and state and local financial problems leading to withdrawal from the system place a considerable financial burden on the 90 percent of the population and their employers who must by law pay for social security. It would appear quite appropriate to move toward universal coverage and the logical starting point is with federal government employees both military and civilian.

Longer-run benefit solutions.—It is clear that in a major overhaul of the social security system, attention must also be directed to preretirement survivor and disability benefits and the appropriate retirement age. As to the former, it is obvious that the needs that survivor and disability benefits are designed to fill are basically different from those for retirement benefits. Thus, it is not necessarily appropriate to have identical benefit structures and formulas for these quite different situations.

Under existing law, there are situations where survivors and disability benefits greatly exceed retirement benefits for persons with similar earnings. This is because earnings are averaged over a shorter and more recent period—when earnings are generally higher.

Decoupling may help eliminate this anomaly in part because past earnings be indexed tending to bring all earnings "up to date."

In addition, there have clearly been cost problems associated with the administration of the disability program. Part of the needed reform is the necessary administrative changes so as to ensure the program provides payments to only those persons who are truly disabled in keeping with what the law now intends.

A longer-run solution related to the benefits discussion involves a change in the retirement age. While there would appear to be no "urgency" in terms of a need for congressional action, it is clear that projections show the proportion of retirees to workers increases greatly in the next century. In addition, other pertinent trends show an increasing physical capability of the aged to continue working. Putting the trends together, and in light of the forecast rise of the social security costs, an attractive option is to encourage later retirement by moving the normal retirement age forward, perhaps to age 68 and early retirement to 65.

SHORTRUN FINANCING SOLUTIONS

When all is said and done about decoupling and benefit modifications, the system still has a short-run financing problem. If Congress rejects the Administration's proposal to adopt general revenue financing—as we have urged it should—the two basic approaches remaining are an increased tax rate and/or an increased taxable wage base. But first, a closer look at the financing problem is in order.

Shortrun financing needs.—The 1977 Trustees' Report provides a "medium-range" cost estimate for the next 25 years (1977–2001). Independent of hospital insurance, the Report indicates that the old-age, survivors, and disability insurance system is estimated to be under-financed by 2.34 percent of taxable payroll under present law and by 2.06 percent of taxable payroll if the system is decoupled and the replacement ratios are stabilized. While it is useful to have 75-year forecasts, it would appear that Congress would be quite safe if it limited its 1977 correction to the shorter run which is about two percent of taxable payroll on an average for the next 25 years, assuming that prompt action will be taken to decouple the system.

Raising the taxable wage base.—Under the Administration's proposal, beginning in 1979 and in each alternate year through 1985, the amount of income subject to social security tax would be increased by \$600, in addition to any increase that went into effect automatically, reflecting increases in the average wage.

While relatively limited, we believe raising the taxable wage base as a financing solution would be counterproductive. First, it seems obvious that arbitrary increases in the maximum taxable wage base are contrary to the goal which would be achieved by recoupling the system by indexing wages. The automatic adjustment system already reflects current changes in terms of the tax burden and wage indexing is a complementary approach to that for determining benefits. Using the wage base to raise needed revenues would simply "distort" what decoupling can accomplish.

Second, raising the wage base automatically generates higher social security benefits and thus represents increased financial obligations for the system. Indeed, a large percentage of the increased revenues accruing from the broadening of the wage base would eventually be paid out in benefits to the affected high-wage earners.

Third, among the other concerns are the following:

1. Expansion of the "savings" imposed on the higher-wage earners and their employers is likely to have a negative effect on private saving and adversely affect the availability of capital.
2. The higher social security benefits which would accompany a wage base increase diminish the role to be played by private pensions.
3. This kind of taxing which is clearly inefficient since it adds to the long-range costs of the system can only be justified on the grounds of income redistribution. If we are going to move to a wage-related system, it is theoretically the wrong kind of tax increase.

Taxing employers on the entire earnings of employees.—At present both the employer and employee pay social security tax only on the first \$16,500 of the employee's earnings. This figure is projected to rise, in stages to \$23,400 by 1982 under current law. By any reasonable man's evaluation, this is hardly a modest base. The Administration's proposal, however, would eliminate the limit on the earning on which employers pay social security taxes—the wage base—in three annual steps, starting in 1979. The base would be increased to \$23,400 in 1979, to \$37,500 in 1980, and to the entire amount of wage or salary paid in 1981. The estimated cost to employers is set at \$30 billion over the next five years.

We are opposed to this financing innovation for a number of reasons. First, this approach is a giant step away from a stricter earnings-replacement scheme. For those who want to clearly establish social security as an income maintenance system, this taxing change is welcome because, as in the case of going to the general revenues, it would redistribute the tax burden on the so-called "ability to pay" basis. As we have noted earlier, we believe it would be a grave error to set an income maintenance goal for the social security system.

Second, this kind of tax will have an uneven impact. Labor intensive and "high pay" industries will be much harder hit than capital intensive and "low pay" industries. While from the capital goods section viewpoint this might spur in some measure the sale of labor saving equipment, it is bad policy in terms of the "fairness" of the tax.

Third, traditionally employers and employees have shared the cost of the social security system. Because of this, a number of offsetting benefits have been provided for employees. For example, the retirement benefit is tax free. While from time to time the case is made that this should be changed, this has been resisted in Congress largely because the worker's contribution of one-half the "cost" was subject to tax when earned. If Congress changes the mix—and removing the lid on the taxable wage base for employers would likely be only a starter—it is logical also to change the tax rules for employees as well because they would be paying a smaller and smaller portion of the cost.

Fourth, coupled with the third point are the findings that in countries with relatively high employer payroll taxes, employers tend to pay a basic wage that is lower by the amount of the tax. Thus, employees might be double losers and end up by paying the tax through cuts in pay increases and losing the tax-free advantage of social security.

In addition, if it is assumed that the incidence of the tax will largely be borne by the consumers through higher prices, then it is an inflationary taxing alternative as well. Beyond the merits this would seem to raise serious political considerations.

Finally, it would appear that this kind of new tax would bring with it a number of administrative problems. Given the complexities of compensation including the range of bonus and incentive programs and the trade-offs made between salary and incentive pay, a host of new rules would have to be promulgated to determine what this new tax was to be levied on. In short, the current employer-employee tax split has considerable merit in that it is relatively simple, an attribute which is said by the Administration to be one of its high-priority criteria for tax policy. Further, there are the broader considerations noted above.

Increasing the tax rate.—The Administration's proposal would provide increases in the tax rate on the self-employed and advance the planned OASD tax rate increase. As to the former, the tax rate on the self-employed would be increased from the present 7 percent to 7½ percent, starting in 1979. The rationale for this change is that it would restore the historical relationship between payments by the self-employed and the employed. We believe that restoring the self-employed rate to 75 percent of the combined rate for employees and employers is appropriate. We note that this change was recommended by the 1975 Advisory Council.

The second tax rate change proposed by the Administration would advance the planned OASDI tax rate increase from the year 2011 to 1985 and 1990. In more detail, the tax increase for that year which amounts to 1 percent each on employer and employee would be moved forward. One quarter of the increase would be imposed by 1985 and the remaining three quarters in 1990. It is anticipated this proposal would reduce the long-term (75 years) taxable payroll deficit of 8.2 by 0.6 percent of taxable payroll.

We believe that the proper financing solution for the short run lies in increasing the tax rate. Although MAPI does not have actuarial expertise, it would appear that a tax rate increase of 0.5 percent for employers and employees each in 1978 coupled with the Administration's proposed increase in 1980 would be sufficient to solve the problem until at least the end of the century. One key factor which must be studied to determine the adequacy of this proposed tax hike is the future reserve level to be maintained. If we are correct, as discussed above, that the reserve can be lowered to a 40 percent, rather than the current 50 percent target, it could mean the 1.0 percent increase is more than sufficient. Further, the tax rate increase would have to be coupled with other reforms such as the higher rate for the self-employed, "decoupling," an elimination of as much of the progressive nature of the benefit structure as possible, and any other benefit reductions that are appropriate. We have, of course discussed these issues in detail above.

As to the rate increase itself, it would be more acceptable when accompanied by the reforms which would make contributions more closely allied to subsequent benefits. On the other hand, it has merit standing alone. Specifically, a tax rate hike does not add to future costs of the system as is the case with the taxable wage base increase. In addition, with the advent of the earned income credit the additional tax on low-income families is less burdensome. It seems obvious that if the low-income workers, like all workers, are going to lay claim to earned benefits under the social security system that they should share a part of the increasing cost of the system.

This approach does not preclude Congress from recognizing the "regressive" nature of the tax rate and opting to provide broader relief under the earned income credit law.

In this connection, a May 19, 1977 staff study entitled "Economic Recovery and the Financing of Social Insurance" issued by the Senate Committee on the Budget points to a couple of specifics that might be employed to reduce the economic impact of "heavy payroll taxation." Suggesting in effect that there must be an adequate flow of trust fund revenues which logically will mean a tax rate increase, the study recommends the use of tax credits for both employers and employees to moderate the impact of the social insurance taxes.

While we do not necessarily advocate such tax credits, we do think it important to preserve the earned income aspects of the social security system and the best way to achieve this goal when financing is needed is an increase in the tax rate. As the study points out, we are now dealing with what we hope and have reason to believe is an extraordinary time in history, namely, the aftermath of a very "abnormal" recession—the worst of the post-war recessions. This created an abnormal impact on the social security "reserve," now being replenished. In this light, extraordinary financing solutions might appear in order but only if of an indirect character, because shifts such as the general revenue financing proposed by the Administration will tend to permanently shift the system towards an income maintenance system. One-time tax credits, a broadened earned income credit, and even higher benefits under SSI do not impact the social security program directly and therefore might be viewed as the proper escape valves.

SOCIAL SECURITY AND PRIVATE PENSIONS

This Subcommittee is well aware of the so-called three-tiered system of retirement benefits. The first tier consists of welfare programs which provide a minimum guaranteed income to the needy elderly. The second is compulsory public contributory programs and the third is private provisions for retirement comprised of private pensions and individual saving.

We have discussed already the relationships between the first and second tier. It is equally important, we believe, to discuss the relationship of the second and third tiers as well.

One of the chief stumbling blocks to compatibility between the public and private retirement systems has been the fact that only about half of the private sector is covered by private pension plans. It would appear in this connection that the Employee Retirement Income Security Act (ERISA) is currently adversely impacting the growth of private plans. While no data is available as to how many employers abandoned plans to install a pension plan because of ERISA, a Pension Benefit Guaranty Corporation (PBGC) study—Publication No. PBGC 505—shows that more than 10 percent of the plans estimated to be covered by termination insurance under Title IV of ERISA have been terminated during 1975-76. Indeed, terminations of single employer defined benefit plans in 1976 increased 84 percent over 1975, and in 1976 15 percent listed ERISA as the sole reason for termination.

It seems obvious that if the private sector is discouraged from providing pension benefits, the social security system will have to fill the gap. It thus would appear appropriate in the current review of the financing needs of the social security system to look once more at the role social security might play in providing incentives for the development of private plans. For example, it would be useful to review the following suggestions:

1. The possibility of an option for employers to establish or maintain a private plan and to deduct the contributions made for such a plan from social security taxes payable to government.
2. The creation of a two-layered social security system with employees covered by private plans given an option of making the full contribution to the optional portion of the public plan or riding with the private plan.
3. Making social security insurance above a certain level optional for all covered employees.

In sum, it appears essential that Congress consider the future growth of the private system while it reviews the public system. In this regard, it would be appropriate to review the growth of individual retirement accounts (IRAs) for workers not covered by a company or union plan. It would also be timely to review once again the rules on the integration of the private and public

plans. Since integration is based on the logical notion that public and private retirement programs should function as a unified system, the steps taken by Congress to move the public system toward more comparability with the private approaches will of course, simplify the integration issues.

It seems clear that the threat of the possible disallowance of integration which would significantly raise the cost of most private plans is now a major disincentive to the establishment of a private plan. Perhaps it is time for a bold step by Congress in this regard. Specifically, Congress could establish the following three-pronged policy:

1. Adequate retirement income for low-wage workers is to be provided by a combination of social security and supplementary security income.

2. Middle-income workers can supplement their social security benefits through either private pension plans or individual retirement accounts.

3. High-income employees are not to receive large public benefits and a cap is to be put on the public system to both prevent windfall benefits for the higher-paid retirees and encourage private saving initiatives, including private plan coverage.

Adoption of this kind of policy would enable statutory rules on integration to be established. It would also make more feasible an integration scheme with public plans for federal, state, and local workers.

To sum up, social adequacy is out of place in an earned income retirement system. Attempts to maintain an adequate retirement program and keep it in major part as an income maintenance system simply will force a host of perversities such as a staggering cost burden and a disincentive to the establishment and maintenance of private plans. It is now timely to recognize that the public system cannot go on much longer as a hybrid system. Recognition of this reality will serve to direct Congress toward the major reforms which will more closely unify the three-tiered retirement system.

RECOMMENDATIONS IN SUMMARY

The Administration has proposed an eight-point program designed to provide both short- and long-run financial solutions to the social security system. We urge the Subcommittee and Congress to *reject* the following solutions:

1. Provisions for a special "counter-cyclical" payment from general revenues.

2. Removal of the ceiling on the amount of an individual's wage or salary on which the employer pays social security taxes.

3. An increase in the amount of the wage base subject to the employee tax, beyond the automatic increases in the current law.

4. A shift of revenue from the HI Trust Fund to OASDI Trust Funds.

We do support the following proposals:

1. An increase in the tax rate on the self-employed from 7 percent to 7½ percent.

2. A change in the test of whether an individual may claim benefit as a dependent.

3. "Decoupling" of the social security benefit formula to eliminate the over-adjustment for inflation now in the law.

4. An advancement of the 1 percent increase in the OASDI tax rate which is scheduled to go into effect in 2011.

Beyond the Administration's proposal, we urge that Congress review social security financing as a part of the total tax picture including all other tax recommendations so that the full impact of the program becomes clear. Specifically, we recommend that Congress take the following steps to alleviate the financial problems of social security:

1. Amend the Act to permit borrowing among the funds and borrowing from general revenues on an emergency basis with the proviso that there be an unqualified obligation to repay these funds.

2. Eliminate the "progressivity" of the current benefit formula; overhaul the spouse's benefit provisions; and remove the minimum benefit.

3. Add an "annual earnings" test to determine entitlement to retirement benefits.

4. Move toward establishment of universal coverage of the system.

5. Reform and improve the administration of the preretirement and disability programs.

6. Change the retirement ages, with regular retirement set at age 68 and "early" retirement at age 65.

7. Enact a tax rate increase of 0.5 percent for employers and employees each in 1978.

8. Provide realistic statutory "integration" rules for private plans, including the adoption of incentives to encourage the growth of the private system.

CONCLUDING COMMENT

The social security system is now some 40 years old and it is very timely for a thorough congressional review of the role that social security can effectively play in the future. It is both not enough and unnecessary to push through crisis-type proposals.

As we see it, the system must be reshaped into a purer earned income replacement program. With the development of the SSI program and the earned income benefit program, Congress has created a floor of protection for low-income workers which can be developed to complement the earned benefit program without directly burdening the system.

It is in our view timely to recognize that, in the long run, the public system cannot be counted on to provide for all retirement needs. Steps taken to limit the program so as to encourage the growth of the private system and other private savings are appropriate. This should be a part of a government program to contain and hopefully reduce the size and intervention of government.

While we understand the magnitude and difficulty of a complete review, we think the timing is now right. Given a redefined goal and policy direction, the social security program can very adequately fill the middle-tier of needs in retirement. In short, the more realistic goal is a return to the social security concepts of some 40 years ago. Unfortunately, the Administration's proposals would, in balance, tilt the system further toward a welfare or income maintenance program. In our opinion, this would be totally unsound.

* * * * *

We appreciate this opportunity to express our views and if we can be of assistance to the Subcommittee in its challenging task of reviewing the Administration's proposals, please feel free to call upon us.

Attachment.

SOCIAL SECURITY--THE "FINANCIAL
CRISIS" IN PERSPECTIVE

Introduction

The growth of public and private institutions as a means of providing retirement income is one of the most important economic phenomena of this century. Starting at nearly ground zero, the pension system has mushroomed to such an extent that today over 90 percent of the entire work force is covered by the social security system or state and local government retirement programs, and approximately one-half of the employees in private, nonfarm business establishments are participants in private pension plans.

But what does the future hold? On the private side, it is probably fair to state that the future is uncertain. This is because of a combination of converging situations. First, the Employee's Retirement Income Security Act of 1974 (ERISA) has brought with it certain clearly identifiable cost burdens, and the threat of further government strait-jacketing of the entire private pension and welfare system.

Second, inflation is a problem. Given the likelihood of continued and significant inflation, the private pension system is challenged by a number of concerns, such as increased costs because of a decrease in the value of plan assets, the plight of the private plan retiree whose pension income is being rapidly eroded, and the impact that inflation will have on government requirements under ERISA and the social security system.

Finally, there is the social security system itself. Its future as a retirement program could well retard the growth of private pension plans.^{1/} Because it is not identical in scope, philosophy, or purposes to the private scheme, it has been impossible to date to balance the two so as to provide complementary programs. Absent universally mandated private benefits, we must face the reality that only a part of the population is covered by supplementary private pensions.

But the same reality indicates that the future growth of the public system could by itself inhibit the growth of the private system since the costs of the two systems are in a major sense substitutes for current wages and salaries. For this reason, the private system has a major stake in the future of the public system. This study comments on what

^{1/} For an earlier MAPI study on this issue, see "Social Security and Private Pensions at the Crossroads: Crisis or Compromise?" (MAPI, 1967).

appears to be in the offing, both in the short-term and long-term for the social security system.

Short-Term

For several years, there has been widespread concern about the financial problems of the social security program (the cash benefits of the old-age, survivors, and disability system). The first official hint of this appeared in the 1974 Trustees Report. This report indicated, however, only that the major problems would occur some years hence, particularly after the turn of the century.

The 1975 Trustees Report brought worse news. Not only were there long-range problems, but because of the combined effects of inflation and unemployment, short-range cash-flow difficulties emerged. An ever gloomier picture was presented in the 1976 Trustees Report. (See Tables III and IV attached.) It was estimated that the Disability Insurance Trust Fund would be exhausted in 1979 under almost any circumstances. The Old-Age and Survivors Insurance Trust Fund was found to be somewhat better off--its exhaustion date was projected to be 1984.

Quite obviously, with so many beneficiaries depending upon this source of income--about 33 million at the present time--some corrective action must be taken by Congress and fairly soon. Congress, however, has been reluctant to act because of economic conditions and has opted to draw down the trust fund reserves on the theory that a tax increase would be counter-productive to the needs of our economy. But even under the more optimistic views, it is apparent that time is running out. Further, the longer Congress waits, the more drastic the cure becomes. Thus, most observers feel Congress will turn to this problem in the 95th Congress.

Additional financing alternatives.--Additional financing for the system can come from only three possible sources. The first is an increase in the tax rates. Along these lines, the then President Ford on January 4 proposed payroll tax rate increases beginning January 1, 1978.¹ In brief, the combined rate would increase gradually until 1981 when it would be 15.7 percent, about 1 percent higher than presently planned under the law. (See attached Tables I and II.)

¹/ President Carter in his budget message of February 22, 1977 "withdrew" the requested social security tax rate increases. The budget message notes:

. . . Proposals to solve the social security financing problem are being carefully reviewed by this Administration, and recommendations to the Congress will be submitted shortly.

Resistance to this approach, i.e., total reliance on a tax rate hike, will come from those who believe an increase in the tax rate worsens the regressive nature of the payroll tax and could increase inflationary pressures in the short run. Proponents will argue, however, that the tax burden on low-income families should be viewed in the context of the total federal tax burden carried by such families and will point to the Earned Income Credit introduced in 1975 which provides direct cash payments to certain low-income taxpayers.

In addition to noting that this credit was designed with the social security tax burden in mind, proponents of this approach will explain that a tax rate hike is less perverse than other forms of adjustment which are possible.

Increasing the taxable wage base.--A second approach is to increase the maximum taxable earnings base to a greater extent than the automatic-adjustment provisions would bring about. Proponents of this approach argue that we still will be within the confines of the payroll tax structure if this is done and will shift the burden to higher wage earners. In this connection, it will be noted that for years the wage base was set at a figure representing the 90th percentile of wages and salaries, but that it is well below that now.

Opponents will argue this would place the increased cost burden on only the top 15 percent of the workers and their employers, and would limit the extent to which the private sector can provide economic security. In addition, it will be pointed out that a wage base increase is less efficient than a tax rate increase because it would create entitlement to higher benefits in the future. In fact, these future benefit costs would actually increase the long-range deficit.

Using the general revenues.--A third approach is to inject a government subsidy into the social security system from the general revenues. Its proponents will argue that a very large part of the benefit commitment is not entirely wage-related, but also includes income redistribution from the richer to the poorer participants. Under these circumstances, it is claimed that it is inequitable to support such transfers of income with funds raised by regressive taxes, particularly when higher incomes derived from sources other than wages are not taxed. Opponents will argue the need to preserve the integrity of the present self-financing system and point out that recourse to general revenues will obfuscate upon whom the burden is really falling. In addition, once we rely on general revenue financing for a significant portion of the benefit cost, we may be forced to increase income taxes as a means of paying for the system.

Other solutions.--It is, of course, possible to have a combination of these three alternative methods of financing. Beyond that, Congress might opt for what could be termed a "wrinkle on the wrinkle," such as:

1. The introduction of a bracket system to provide higher tax rates for higher income workers a la the income tax system.
2. Removal of the ceiling on the employer's wage base.
3. Provision for a one-time grant from the general revenues and/or emergency borrowing authority from the general fund.
4. Simplification of the benefit formula designed to reduce the cost impact of "double dippers," e.g., government workers, state or federal, having limited covered employment but nonetheless qualifying for a "reasonable" social security retirement benefit. One suggestion for such simplification is to design a final average pay concept such as the 10 consecutive years of highest covered earnings with the benefit produced prorated if the employee has not been covered for at least 35 years.
5. Levy an income tax on one-half the benefits or make F.I.C.A. taxes deductible to the employee on his federal income tax, but in exchange, tax all benefits as income to accompany a shift of part of the financing to the general revenues.
6. Transfer certain of the social security benefits which are basically income transfers from high-wage earners to other public assistance systems paid for by the general revenues.

Although the crystal ball is fuzzy at this point, many observers believe that a combination of the three basic approaches will be adopted by Congress. As to timing, final action is expected to take place no later than early 1978.

A comment on the tax aspect.--There is a dilemma facing Congress regarding the financing needs of the social security system. As noted above, Congress must correct for the unexpected near-term shortfalls of income in order to prevent the trust funds from becoming totally depleted. It could, of course, change the benefit structure, but this alternative is at best remote in light of government's implied promises and the fact that financial plans are based, rightly or wrongly, on the stability of the program. It is when this option is ruled out that Congress faces a dilemma. On the one side, Congress is looking at a substantial "stimulation" package proposed by the Administration to ensure economic recovery which ironically includes --at least as proposed--an option for employers to take a credit against income taxes equal to 4 percent of social security payroll taxes and a \$50 payment to every beneficiary of social security. On the other side, Congress must consider raising payroll taxes at least as one option to adequately finance the social security system, and this would increase the total federal tax burden carried by families and employers. If on the other hand, Congress relies on general revenue financing for a portion of the benefit

cost for the wage-related OASDI system, it will eventually be forced to turn to increased income tax rates as part of the means for obtaining the income needed to provide benefits.

Compounding this dilemma for Congress is the fact that a host of costly benefit improvements in the system are gaining additional supporters. For example, there is an amendment proposed that would end the limitation on income which a person can earn after becoming a beneficiary following retirement. There are also the pending changes that would eliminate alleged sex discrimination in the benefit system. And so on.

In sum, it is no longer possible for Congress to look at social security without reviewing the entire federal tax picture. Further, absent variable social security benefits, it is not likely that social security tax increases will be synchronized with the general economic needs.¹

Long-Term

As noted earlier, it was pointed out in the Trustees Report of 1974 that the system has a long-term financing problem, and under the system, long-term is indeed that because the Trustees' forecasts cover 75 years, or until the year 2050. Under the 1976 Report, the magnitude of the problem is spelled out in a variety of ways. Most conservatively, the projection is for an actuarial deficit in the system of 7.76 percent of taxable payroll over the next 75 years. Stated in absolute terms, the deficit is \$4.3 trillion, using an annual interest rate assumption of 6.6 percent. It has also been estimated that there is an unfunded accrued liability of about \$700 billion--the present value of future benefits to 33 million beneficiaries, including benefits "earned" or accrued to taxpayers increases the liability to \$3.1 trillion. All appear agreed that a large long-range deficit appears likely under current economic assumptions.

Causes of the long-term deficit.--Among the major causes of the long-term deficit in the social security system are the changed relationship between increases in prices and increases in wages, a basic flaw in the benefit formula, and changes in the fertility rate.

Increases in wages and prices.--In 1972 when Congress adopted the system of automatic benefit increases, i.e., increases in accordance with changes in the cost of living, it also proposed to pay for the benefit hikes by automatically raising the tax and benefit base in accordance with upward shifts in covered wages. The theory was that for the past twenty years wages had grown almost twice as fast as prices and if that relationship

¹/ There is of course the alternative of reducing expenditures elsewhere in the federal budget as an offset to higher social security benefits, but that is beyond the scope of this discussion.

continued, tax revenues would automatically be produced sufficient to support the new benefit level.

Obviously, the projected trend has not materialized. Recently, prices have risen faster than wages and the Trustees in 1976 estimated that over the long term wages will rise at 5.75 percent per year and prices will rise at 4 percent. To avoid deficits if prices rise at 4 percent, wages would have to rise at a rate close to 8 percent per year. Should a higher rate of inflation than that projected become typical, the costs of the system could skyrocket because wages may not rise as fast as prices and clearly not twice as fast.

To date no one is talking about a solution to this problem, in large part because it is not politically expedient to eliminate the automatic adjustment provision for benefits. On the other hand, a lot of talk has taken place over the cure to a second problem--a basic flaw in the benefit formula.

Basic flaw in benefit formula.--It is important to look at this second cause of the long-range cost overrun of the system because major proposals to correct the problem have already been presented to Congress./1

The social security benefit computation formula is simply an equation to determine how much of the earnings that were lost by retirement, death, or disability will be replaced by the benefit. To arrive at the benefit amount, it is necessary to determine average monthly earnings covered under the system and multiply those by a now 9-part replacement formula.

The "flaw" present is traceable to the statutory changes in 1972. Under these changes, whenever benefits for those already on the rolls are increased to keep pace with the cost of living, the wage replacement fact is increased by the same percentage (see Table V attached). This assures that every future retiree who has the same average lifetime wage as a current retiree will receive the same benefit. The adjustment or indexing, however, overlooks the fact that average lifetime wages covered by the system are also rising and, therefore, the benefit formula is actually over-adjusted.

Until about 1995, this over-adjustment compensates for a different adverse phenomenon--the lengthening of the period over which wages are averaged. In 1950, the law was amended so that the averaging period

1/ The Carter Administration in its budget message of February 22, 1977 notes that "[t]he proposed change to correct certain technical deficiencies in the adjustment of social security benefits is being deferred pending further study."

includes only those years since 1950. As the averaging period gradually increases, the average lifetime wage will become smaller as a percentage of final wages.

Most proposals for correcting the benefit computation formula would eliminate the indexing of the wage replacement formula by freezing the replacement factors for three categories of earners--low, average, and maximum--and replace this adjustment by indexing the earnings history. "Indexing" earnings history translates each past year's earnings into current year's values by multiplying the past year's earnings by the growth that has taken place in some other economic factor.

The two most popular measures for indexing the earnings history are (a) wages or (b) prices. The difference between them is already an important issue for Congress.

The Ford Administration last June (MAPI Memorandum G-86) suggested wage-indexing the earnings history in order to stabilize the current relationship between benefits and final wages. Under this approach, all prior-year wages would have the same comparative value as wages earned in the year before retirement. This approach would eliminate about half the long-term deficit.

A "Consultant Panel" reporting to the congressional tax committees last April recommended indexing the earnings history by price. Since prices over a long period of time have not risen as rapidly as wages, the relationship of benefits to final wages declines continuously over time. Thus, all other things being equal, price-indexing develops more savings, and it could be employed to eliminate the entire deficit by itself.

The problem is obvious, however; price-indexing would result in an across-the-board reduction in benefit commitments for future retirees. Those who argue for price-indexing contend in this regard that adjustments can be made later by future Congresses whenever they believe it to be necessary.

To sum up, "decoupling," as both of the approaches are called, appears to have support, and it is likely that Congress will act on this in the 95th session. At the moment, it would appear the proponents of wage-indexing are in the majority.

Fertility rates.--The third major cause of the long-range deficit is the demographic shift. Knowledge that those born during the post-war baby boom of 1947 to 1954 will be retiring in the years from 2012 to 2020 has, of course, been built into the long-range projections. In addition, the actuaries have cranked in the fact that improved medical care, diet, etc., have swelled the number surviving to old age, pushing the death rate to new lows almost every year which means a steady expansion of the ranks of the aged.

However, the continuation and depth of the decline in the fertility rate following the baby boom have only recently been introduced as actuarial assumptions. More specifically, for the first 11 months of 1976, the rate was 65.7 births for each 1,000 women in the childbearing ages (15 to 44), down from 66.7 in 1975. At the crest of the post-war "baby boom" in 1957, the corresponding figure was 122.7; the previous low was 75.8 in 1936 during the depression.

Further, for the past several years the "total fertility rate," or the average number of children born to each family, has dropped below the "replacement level" of 2.1. This is the figure at which the population would, after some decades, cease to grow. From 3.7 children for each family in 1957, the total fertility rate fell to 1.8 in 1975. The Trustees have forecast this rate to average 1.9 for the next seventy-five years.

These changes in fertility rates would bring about the lowest ratio of working age population to retired population that the system has ever experienced. The ratio will shift from 30 beneficiaries per 100 workers in 1975 to 50 beneficiaries per 100 workers in 2030. To fund the additional beneficiaries with the smaller ratio of taxpayers would require an increase of about 20 percent over scheduled tax rates for each worker.

The most commonly cited solution is to extend the retirement age to 68 some time after the turn of the next century. A standard retirement age of 68 would sharply reduce the expected duration of the retirement period for all workers.

One of the interesting sidebar issues raised by the changing demographic makeup is the increasing attention older citizens will receive in the next 30-40 years. For example, there has been a trend toward early retirement and early retirement options in private plans. Counterbalancing this trend, there is now considerable support in Congress to remove at least the upper age limit in the age discrimination in employment law. Thus, instead of a protected group between the ages of 40 and 65, the law would protect people of all ages over 40 against discrimination in employment because of age. Should this change be enacted or should the current law be construed to be a barrier against company-dictated retirement before age 65,¹ it is possible to envision employees having the best of both possible worlds--able to retire early or to work to age 65 and beyond. In sum, the demographic shift is certain to impact socio-economic priorities and the political responses to these issues.

^{1/} See, for example, *McMann v. United Airlines*, decided by the Fourth Circuit on October 1, 1976. The Supreme Court has agreed to review this case.

Concluding Comments

It is fair to say that most observers recognize serious short- and long-range financing problems for social security. It is equally well known that the solutions such as lower benefits and/or tax increases are not easy ones. It would appear to be an ideal time to examine the future course of both the public and private systems. While to date, Congress has not shown any real interest in the compatability of the two programs, it is clear that the problems besetting the system call for Congress to think through a comprehensive set of changes which would be adequate to solve the total financial problem. In this process, a number of structural proposals are bound to be reviewed which could have a major impact on the future of the private system. In sum, it appears that the social security deliberations of the 95th Congress are going to be particularly important to the future of private plans.

Table I

Benefit and Tax Picture Under Current
Law and Assumptions /1

<u>Year</u>	<u>Jan. Tax and Benefit Base</u>	<u>Current OASDHI Tax Rate (Percentage)</u>	<u>Max. Tax Payable for Employer and Employee Each</u>
1977	\$16,500	5.85	\$ 965.30
1978	17,700	6.05	1,070.90
1979	19,200	6.05	1,161.60
1980	21,000	6.05	1,270.50
1981	22,800	7.30	1,664.40

1/ Based on testimony presented to the Joint Economic Committee by the Congressional Budget Office; see Vol. 122, No. 88, Cong. Rec. at S.8772, June 9, 1976.

Table II

Benefit and Tax Picture Assuming President
Ford's Recommendations Are Adopted /1

<u>Year</u>	<u>Jan. Tax and Benefit Base</u>	<u>OASDHI Tax Rate (Percentage)</u>	<u>Max. Tax Payable for Employer and Employee Each</u>
1977	\$16,500	5.85	\$ 965.30
1978	17,700	6.15	1,088.60
1979	19,200	6.45	1,238.40
1980	21,000	6.60	1,386.00
1981	22,800	7.85	1,789.80

1/ Based on President Ford's tax recommendations to Congress, January 4, 1977; see Vol. 123, No. 1, Cong. Rec. at S.41, January 4, 1977.

Table III

Trustees' Projections (Intermediate Assumption) of
the Progress of the Old Age Survivors Insurance
(OASI) Trust Fund for Fiscal Years 1977-81 /1

	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Economic Assumptions, Calendar Year					
Annual Increases in Wages (Subject to Social Security) (percent)	8.5	9.4	8.5	7.7	6.7
Annual Increase in Prices (percent)	6.0	6.0	5.5	5.0	4.5
Rate of Unemployment (percent)	6.9	6.6	6.2	5.7	5.2
Maximum Taxable Wage (In \$ Thousands)	16.5	17.7	19.2	21.0	22.8
(In \$ Billions)					
Total Income	71.8	79.1	87.2	95.6	103.3
Total Outgo	73.4	81.5	89.7	98.7	108.0
Net Increase	-1.6	-2.4	-2.5	-3.1	-4.7
Reserve, End of Year	35.9	33.5	31.0	27.9	23.2

1/ U.S. Congress, House, 1976 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, 94th Cong., 2d Sess., May 25, 1976, pp. 22-23 and 30.

Table IV

Trustees' Projections (Intermediate Assumption) of
the Progress of the Disability Insurance (DI)
Trust Fund for Fiscal Years 1977-81 /1

In \$ Billions	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Total Income	9.5	10.7	11.8	12.8	14.6
Total Outgo	11.3	12.8	14.5	16.4	18.3
Net Increase	-1.8	-2.1	-2.7	-3.6	-3.7
Reserve, End of Year	4.8	2.7	-0.001/2	-3.6	-7.2

1/ U.S. Congress, House, 1976 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, 94th Cong., 2d Sess., May 25, 1976, p. 32. The economic assumptions are spelled out in Table III.

2/ Fund has no authority to go into a negative balance. These figures are demonstrative of what would happen if the fund were to borrow money.

Table V

OASDI Benefit Schedule, 1975,
1976 and 1977 /1

	<u>1975</u>	<u>1976</u>	<u>1977</u>
		<u>Percentage</u>	
First \$110 of Avg. Mo. Earnings/2	119.89	129.48	137.77
Next \$290 of Avg. Mo. Earnings	43.61	47.10	50.11
Next \$150 of Avg. Mo. Earnings	40.75	44.01	46.83
Next \$100/3 of Avg. Mo. Earnings	47.90	51.73	55.04
Next \$100 of Avg. Mo. Earnings	26.64	28.77	30.61
Next \$250 of Avg. Mo. Earnings	22.20	23.98	25.51
Next \$175 of Avg. Mo. Earnings	20.00	21.60	22.98
Next \$100 of Avg. Mo. Earnings		20.00	21.28
Next \$100 of Avg. Mo. Earnings			20.00

Note: This table shows the progression of the now 9-part formula used to determine the "primary insurance amount" (PIA) which is derived from the worker's covered earnings or "average monthly earnings" (AME). Whenever a cost-of-living benefit increase becomes effective, the new PIA is calculated by increasing the old PIA by the same percentage as the cost-of-living increase. If the contribution and benefit base is raised, the benefit formula provides an additional 20 percent replacement on that part of the AME above the previous contribution and benefit base.

1/ Source: Social Security Administration, U.S. Department of Health, Education, and Welfare. See Social Security Bulletin, July 1976 p. 41.

2/ The Avg. Mo. Earnings (AME) is a worker's taxable earnings beginning with 1951, or age 22 if later, up to the year of disability, death, or attainment of age 62 (age 63-65 for men born before 1913)--less the 5 lowest earnings years--divided by the number of months in the computation years.

3/ At the beginning of 1977, the highest average monthly covered earnings possible are \$634 for a male worker at age 65 and \$650 for a woman. The monthly primary insurance amount at \$650 average monthly earnings (AME) is \$422.40.

Mr. WAGGONNER. Thank you, Mr. Stewart.

Mr. ARCHER, will you inquire?

Mr. ARCHER. Mr. Chairman, I have no questions.

Mr. WAGGONNER. Mr. Schulze, do you have questions?

Mr. SCHULZE. I have no questions, Mr. Chairman.

Mr. WAGGONNER. I have just a question or two.

Do I understand you to say that you oppose an increase in earned income limitation? Did I understand that you were saying that would be opposed by your group?

Mr. STEWART. No. I did not say that.

Mr. WAGGONNER. I wasn't sure about that.

Now, you say that we can resolve the problem at least on a short-term basis and get out of the crisis atmosphere by increasing the tax rate on the employer and on the employee?

Mr. STEWART. Coupled with decoupling and some other limited steps.

Mr. WAGGONNER. Coupled with decoupling which has long-range value.

Do you have any suggestions as to the percentage of increase to accomplish that, and could you put a time parameter on whatever percentage you might suggest?

Mr. STEWART. Yes; 0.5 percent for employers and employees each.

Mr. WAGGONNER. Do you have any idea what time period of stability would be provided by that tax rate?

Mr. MARSTON. The studies we have been show that with something of that magnitude, it might be a little less, maybe a little more, combined with decoupling for about 5 years, the system would probably be secure, at least for 5 years, maybe longer, depending on the economic situation.

Mr. WAGGONNER. There isn't any doubt that we have something in the way of a crisis atmosphere. You do take the position, do you not, that we have to do something now to provide for stability on a short-range basis of the Trust Fund?

Mr. STEWART. Without the slightest question.

Mr. WAGGONNER. Given that point of agreement, if the short-range tax program as you recommend, 0.5 percent each on the employer and the employee, is aggravated by another predictable or unpredictable 1967 period of stagnation, stagnation combined with the cost-of-living increases enacted in 1972, would you feel that the Social Security System would be worth saving if there was no alternative except for an influx of Treasury funds?

Mr. STEWART. The answer is "Yes" with these qualifications:

First of all, we do not believe that we should move now or later in the direction of separating the Social Security System from its original concept of a contribution by the employer and the employee, a so-called earn-your-way approach in the private sector.

Now, you may recall that I mentioned that if the Congress wanted by some protective mechanism to provide for, under emergency conditions, access to general funds, it should be repaid without the slightest question. Also I think we should bear in mind that when the Social Security System is operating in its normal fashion without too much tinkering, it builds up reserve in good economic times.

The purpose of the reserve is to take care of emergency situations to the extent that it lasts. Our feeling is that even with the deepest recession that this country has confronted since the depression, that reserve worked very well. It did precisely what it was intended to do. And now, if you look at the funds, you will find that it is replenishing itself at a very nice rate, as we have already pointed out.

My answer to the question is we would not bar emergency situation action and emergency conditions, but we believe that it should be done with an absolutely irrevocable commitment to repay the Treasury.

Mr. WAGGONNER. Thank you, Mr. Stewart, for your testimony this morning. I am glad to have you before the committee once again.

Mr. Leffler not being present, the committee stands adjourned subject to the call of the Chair.

For the benefit of the members present and that others might be advised, it is the intention of the Chair to reconvene the subcommittee Friday morning, probably at 9:30 to discuss what we are going to do about hearings. We have discussed among ourselves what we might do. We want to reach a resolution of that problem as to what we are going to do in the subcommittee and what we hope to discuss it with Mr. Ullman, the chairman of the full committee. We will discuss a timetable for markup of this legislation because it is something that is not going to lay around unattended. I can assure you of that.

There are a couple of other matters that the staff will have for us to discuss at that point in time.

Mr. Pickle?

Mr. PICKLE. Mr. Chairman, what time do we meet Friday?

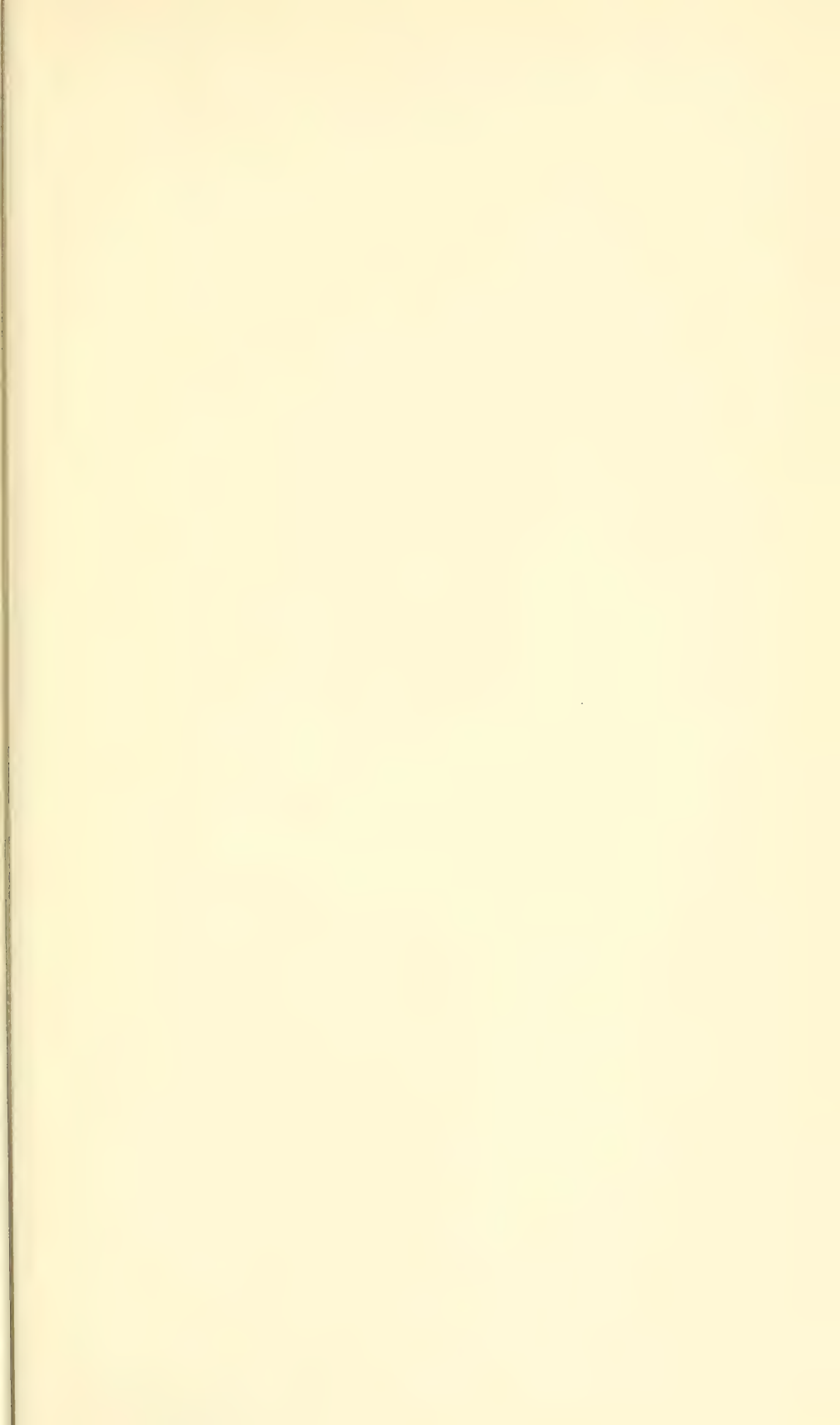
Mr. WAGGONNER. The House meets at 10 o'clock Friday morning and we would hope to meet at 9 or 9:30.

Mr. PICKLE. We will not hold a session this afternoon or on Thursday?

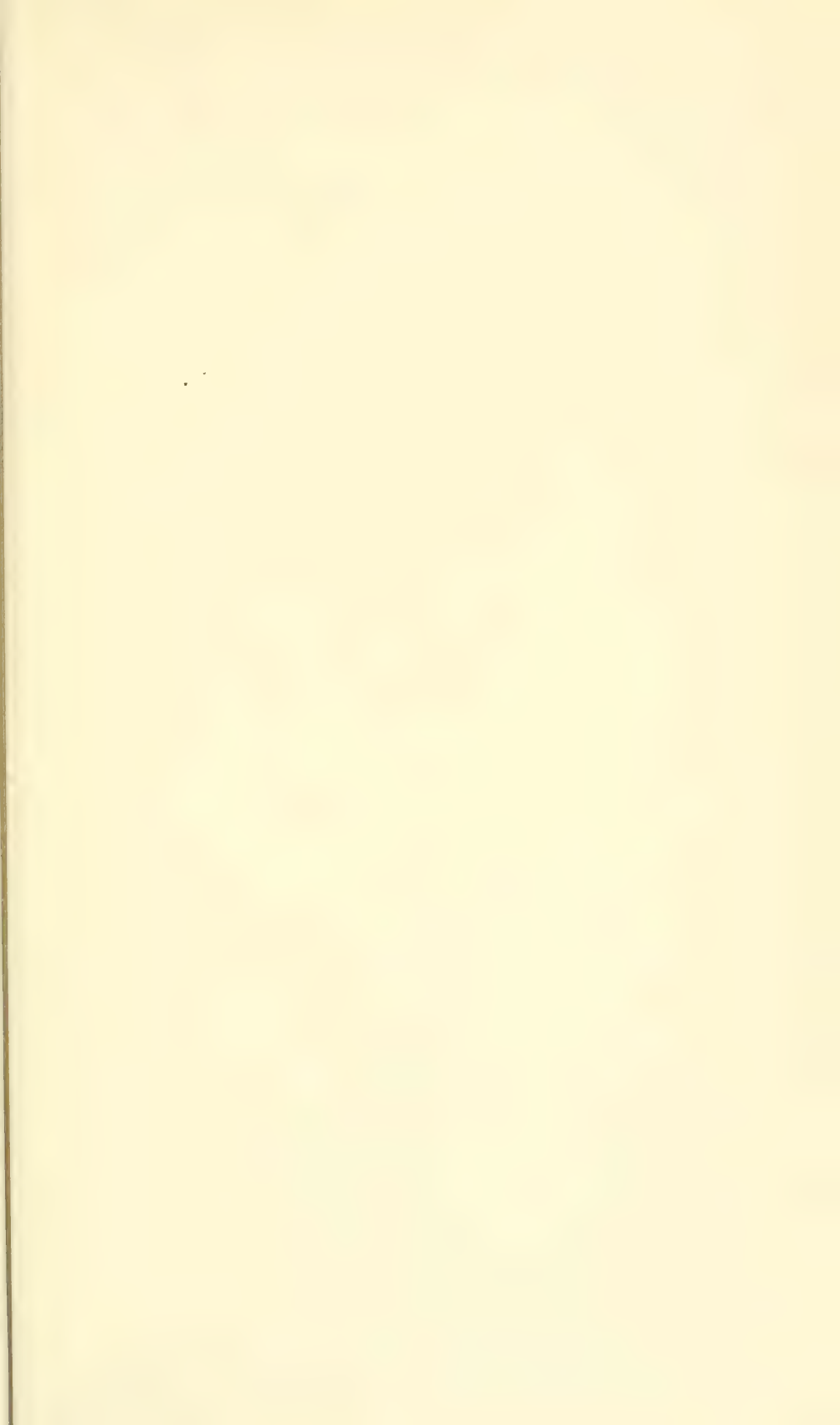
Mr. WAGGONNER. No, sir, the committee stands adjourned until Friday morning.

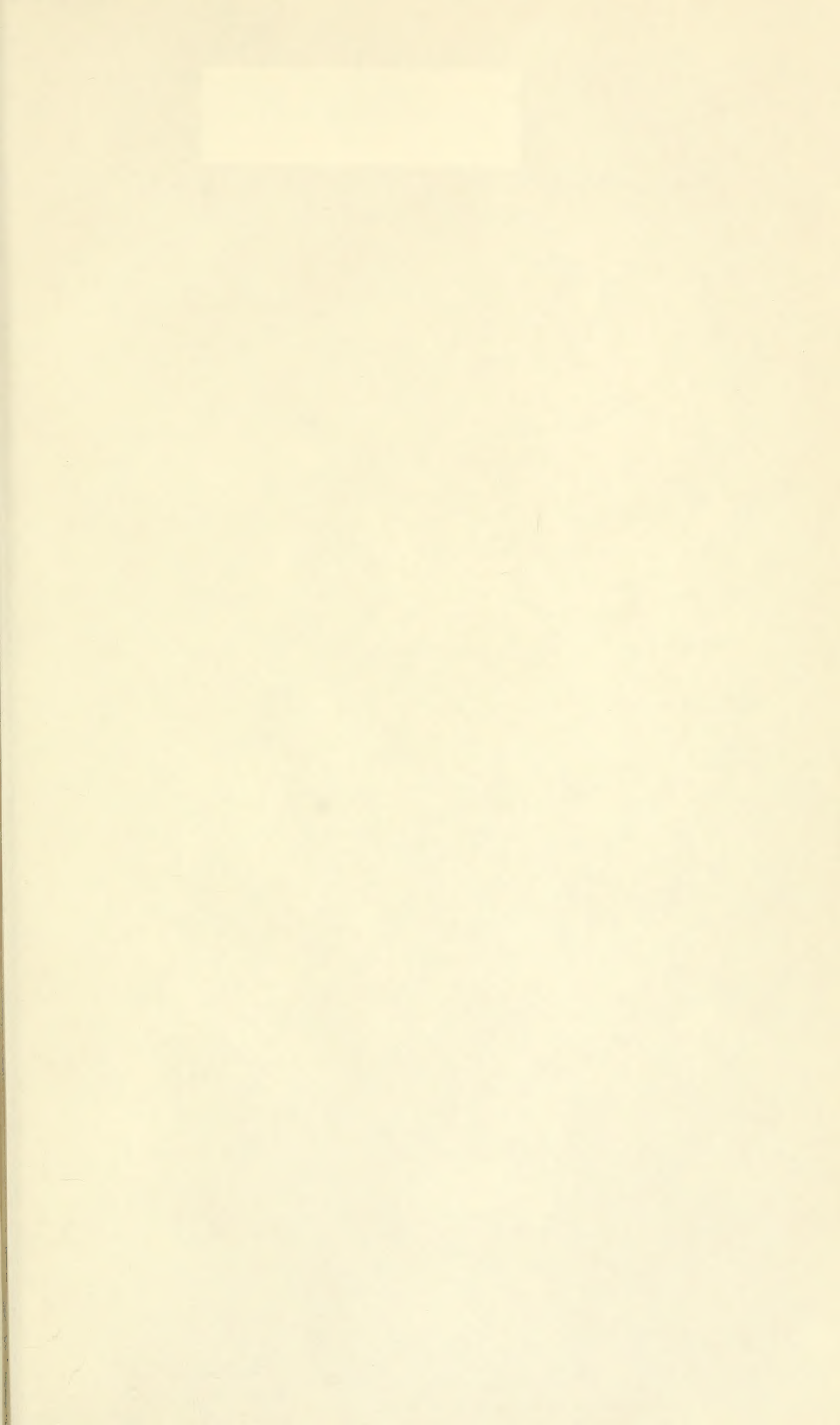
[Whereupon, at 12:01 p.m., the hearing was adjourned.]











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